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HOUSE BILL 3035

By Walley

AN ACT to amend Titles 4, 33, 36, 37, 38, 39, 40, 41, 49, 68 and 71 of the Tennessee Code Annotated, relative to the care for and protection of certain persons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 3, Part 5 is amended by deleting Part 5 in it entirety, and by substituting instead Sections 2 through 13 as a new part 5.

SECTION 2.

71-3-501. Definitions.

(a) As used in this part, unless the context otherwise requires: "child care agency" includes "child care center," "family child care home," "group child care home," and "prescribed child care center" as defined in subsection (b).

(b) As used in this part, unless otherwise excluded pursuant to § 71-3-503, and unless the context otherwise requires:

(1) "Care giver(s)", or "care provider(s)", means the person(s) or entity(ies) directly responsible for providing for the supervision, protection and basic needs of the child;

(2) "Child or children" means a person or persons under the age of eighteen (18);

(3) “Child care” means, for purposes of this part, the provision of supervision, protection and, at a minimum, the basic needs of at least five (5) children, who are not related to the primary caregivers, for three (3) or more hours a day, but less than twenty-four (24) hours a day. Care for a child of twenty-four (24) hours duration is “residential child care”, which is provided by the department of children’s services pursuant to title 37, chapter 5, part 5.

(4) “Child care agency” or “agency” means, for purposes of this part, and only where the context requires, the person or entity that provides child care, regardless of whether such person or entity is licensed.

(5) “Child care center” means any place or facility operated by any person or entity that provides child care for thirteen (13) or more children. All children present in the center, including those related to the primary caregiver, are counted in determining if the place or facility must be licensed as a child care center. If the child care center is operated in the occupied residence of the primary caregiver, children in the home who are thirteen (13) years of age or older and who are related to the primary caregiver are not counted in determining the total number of children permitted in this class of child care agency, provided that the related children have their own space separate from the space occupied by the licensed child care center.

(6) “Commissioner” means the chief administrative officer in charge of the department of human services.

(7) “Department” means the department of human services.

(8) “Family child care home” means any place or facility operated by any person or entity that provides child care for at least five (5) children, but not more than seven (7) children. Children in the home who are thirteen (13) years of age or older and who are related to the primary caregiver are not counted in determining the total number of children permitted in this class of child care agency, provided that the related children have their own space separate from the space occupied by the licensed family child care home. To be licensed

as a family child care home, the place or facility must be in the occupied residence, as defined by the department, of the license applicant.

(9) "Group child care home" means any place or facility operated by any person or entity that provides child care for at least eight (8) children, but not more than twelve (12) children. If the group child care home is operated in the occupied residence, as defined by the department, of the primary caregiver, children in the home who are thirteen (13) years of age or older and who are related to the primary caregiver are not counted in determining the total number of children permitted in this class of child care agency, provided that the related children have their own space separate from the space occupied by the licensed group care home.

(10) "Prescribed child care center" means a nonresidential child care, health care/child care center providing, in addition to child care as defined in this part, physician prescribed services and appropriate developmental services for six (6) or more children who are medically and/or technology dependent and who require continuous nursing intervention.

(11) "Related" means for purposes of "child care": the children, step-children, grandchildren, step-grandchildren, siblings of the whole or half-blood, step-siblings, nieces, nephews or foster children of the primary care giver.

### SECTION 3.

71-3-502. Basis for licensing; regulations; license application; temporary license; non-transferability of license; transfer of operation to circumvent licensing laws or regulations; fees.

(a)(1) All persons or entities operating a child care center, a family child care home, a group child care home, or who operate a prescribed child care center as defined in §71-3-501, must be licensed by the department of human services as provided by this part.

(2)(A) The department of human services shall have authority to issue regulations pursuant to the provisions of title 4, chapter 5, part 2 for the licensing of any persons or

entities subject to any provisions of this part and for enforcement of appropriate standards for the health, safety and welfare of children in their care.

(B) To the extent they are not inconsistent with the statutory provisions of this part, the regulations of the department of human services which are in effect upon the effective date of this act shall remain in force and effect until modified by regulatory action of the department.

(3) The department of human services' regulations of child care agencies shall be developed, and the continued approval of the licensing status of a child care agency, shall be based upon the following criteria:

(A) The safety, welfare and best interests of the children in the care of the agency;

(B) The capability, training and character of the persons providing or supervising the care to the children;

(C) The quality of the methods of care and instruction provided for the children;

(D) The suitability of the facilities provided for the care of the children; and

(E) The adequacy of the methods of administration and the management of the child care agency, the agency's personnel policies, and the financing of the agency.

(b)(1)The department shall assist applicants or licensees in meeting the child care standards of the department unless the circumstances demonstrate that further assistance is not compatible with the continued safety, health or welfare of the children in the agency's care and that regulatory action affecting the agency's license is warranted. All costs and expenses arising from or related to meeting the child care standards of the department shall be borne entirely by the applicant or licensee; provided, however, the department may, in its discretion, provide from available funds for technical assistance to child care agencies, and the training of, child caregivers.

(2) If a licensee is denied the renewal of a license, or if a license is revoked, or if any applicant for a license cannot meet the standards, then the department shall offer

reasonable assistance to the parent, guardian or custodian of the child in planning for the placement of such children in licensed child care agencies or other suitable care.

(c) Application for a license to operate a child care agency shall be made in writing to the department in such manner as the department determines and shall be accompanied by the appropriate fee set forth in the fee schedule in subsection (g).

(d)(1)(A) If the department determines that the applicant for a license, which is not the renewal of an existing license, has presented satisfactory evidence that the facility which is proposed for the care of children has received fire safety and environmental safety approval, that the applicant and the personnel who will care for the children are capable in all substantial respects to care for the children and that the applicant has the ability and intent to comply with the licensing law and regulations, the department shall issue a temporary license to the applicant.

(B) If the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted license which limits the agency's authority in one or more areas of operation.

(2) The purpose of the temporary license is to permit the license applicant to demonstrate to the department that it has complied with all licensing laws and regulations applicable to its classification prior to the issuance of an initial annual license.

(3) Within one hundred twenty (120) days of the issuance of the temporary license, the department shall determine if the applicant has complied with all regulations governing the classification of child care agency for which the application was made.

(4)(A) If the department determines that the applicant for any license has complied with all licensing regulations for the classification of child care agency for which application was made, the department shall issue an annual license.

(B) If the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted license which limits the agency's authority in one or more areas of operation.

(5) The licensee shall post the license in a clearly visible location as determined by the department so that parents or other persons visiting the agency can readily view the license and all the information on the license.

(6)(A)(i) The license shall describe the ownership of the child care agency, the person who is charged with the day-to-day management of the child care agency, and, if the agency is owned by a person other than the director, or if the agency is under the ownership or direction or control of any person or entity who is not also the on-site director or manager of the agency, the license shall also state the corporate or other name of the controlling person or entity, its address and telephone number where the parents, guardians or custodians may have contact regarding the agency's operations.

(ii) If the child care agency is operated by a public or private non-profit entity and is subject to the control or direction of a board of directors or other oversight authority, the license shall list the name, address and telephone number of the chairman of the board or other executive head of such controlling body.

(7) In granting any license, the department may limit the total number of children who may be enrolled in the agency regardless of the agency's physical capacity or the size of its staff.

(8) If the department fails to issue or deny an annual license within one hundred twenty (120) days of the granting of the temporary license, the temporary license shall continue in effect, unless suspended, as provided in § 71-3-509, until such determination is made. If an annual license is denied following the issuance of a temporary license, and if a timely appeal is made of the denial of the annual license, the temporary license shall remain in

effect, unless suspended, until the board of review renders a decision regarding the denial of the annual license.

(9) If a temporary or annual license is denied, or an annual license is restricted, the applicant may appeal the denial or restriction as provided in § 71-3-509.

(e)(1) No license for a child care agency shall be transferable, and the transfer by sale or lease, or in any other manner, of the operation of the agency to any other person or entity shall void the existing license immediately and any pending appeal involving the status of the license, and the agency shall be required to close immediately. If the transferee has made application for, and is granted, a temporary license, the agency may continue operation under the direction of the new licensee. The new licensee in such circumstances may not be the transferor or any person or entity acting on behalf of the transferor.

(2) If, however, the department determines that any person or entity has transferred nominal control of an agency to any persons or entities who are determined by the department to be acting on behalf of the purported transferor in order to circumvent a history of violations of the licensing law or regulations or to otherwise attempt to circumvent the licensing law or regulations or any prior licensing actions instituted by the department, the department may deny the issuance of any license to the applicant. The denial of the license may be appealed as provided in § 71-3-509.

(f)(1) Following the expiration of a least one (1) annual license, the department may issue an extended license to a licensee who seeks renewal of an existing license if the department determines that the licensee has demonstrated that its methods of child care and its adherence to licensing laws and regulations are clearly appropriate to justify an extended licensing period. An extended license may not be granted as the first license immediately following any temporary license.

(2) The department may by rule establish any criteria for the issuance of an extended license; provided, however, no extended license shall exceed three (3) years duration.

(3) At the time renewal of the license is sought, or at any other time during the licensing period, the department may reduce the period of the extended license to a shorter period if it determines that the licensee has failed to demonstrate continued adherence to the requirements for the issuance of the extended license. The licensee may appeal such action as provided in § 71-3-509.

(4) The issuance of an extended license shall not be construed in any manner to prevent the department from suspending or revoking the license, or placing an agency on probation, or imposing a civil penalty, if it determines that such action is appropriate.

(g) The following licensing fees shall apply to applications for licenses for child care agencies licensed pursuant to this part:

(1) Family child care homes.....	Annual fee.....	\$100.00
	Biennial fee.....	\$150.00
	Triennial fee.....	\$175.00
(2) Group child care homes.....	Annual fee.....	\$125.00
	Biennial fee.....	\$175.00
	Triennial fee.....	\$200.00
(3) Child care centers (Less than 100 children).....	Annual fee.....	\$200.00
	Biennial fee.....	\$250.00
	Triennial fee.....	\$300.00
(4) Child care centers (More than 100 children).....	Annual fee.....	\$400.00
	Biennial fee.....	\$450.00
	Triennial fee.....	\$500.00
(5) Child care centers (More than 250 children).....	Annual fee.....	\$500.00
	Biennial fee.....	\$550.00
	Triennial fee.....	\$600.00
(6) Prescribed child care centers.....	Annual fee.....	\$400.00



Biennial fee.....\$450.00

Triennial fee.....\$500.00

(h) All licensure application and renewal fees collected by the department from family child care homes, group child care homes, child care centers and prescribed child care centers shall be paid into the general fund, but shall be earmarked for and dedicated to the department of human services. Such earmarked fees shall be used by the department exclusively to improve child care quality in this state.

(i) Notwithstanding any provisions of title 13, chapter 7, to the contrary, upon adoption of a resolution by a two-thirds (2/3) vote of the county legislative body, any zoning authority, in determining the suitability of a request for any use of property for the establishment or alteration of any child care agency, may consider the criminal background of the person or persons making a request to such board or may consider the criminal background of any person or persons who will manage or operate such child care agency. The board may require the person to submit a fingerprint sample and a criminal history disclosure form and may submit the fingerprint sample for comparison by the Tennessee bureau of investigation pursuant to § 38-6-109, or it may conduct the background check by other means as it deems appropriate. The zoning authority shall be responsible for all costs associated with obtaining such criminal background information.

#### SECTION 4.

71-3-503. Program and facilities exempt from licensing.

(a) Except as provided in subsection (b), the provisions of this part requiring licensing of child care agencies do not apply to:

(1) All child care of less than three (3) hours' duration daily;

(2) Entities or persons licensed or otherwise regulated by other agencies of the state or federal governments providing health, psychiatric or psychological care or treatment or

mental health care or counseling for children while the entity or person is engaged in such licensed or regulated activity;

(3) Pre-school or school age child care programs, a Title I program, a Head Start or an Even Start program, and all state-approved Montessori school programs, that are subject to regulation by the department of education or other departments of state government;

(4) Private or parochial kindergartens for five (5) year old children if such kindergartens operate on the public school kindergarten schedule;

(5) Child care centers operated by church-related schools, as defined by § 49-50-801, which shall be subject to regulation by the department of education pursuant to title 49, chapter 1, part 10;

(6) Schools and educational programs and facilities the primary purpose of which is to provide a regular course of study necessary for advancement to a higher educational level or completion of a prescribed course of study;

(7) "Parents' Day Out" or similar programs carried on by churches or church organizations which provide custodial care and services for children of less than school age for not more than two (2) days in each calendar week for not more than six (6) hours each day;

(8) Recreational programs or facilities, the primary purpose of which is physical education or physical or craft activities including, but not limited to, county or municipal recreation centers and summer programs associated with them or which are operated or sponsored by public school systems, health clubs, swimming pools, bowling alleys or skating facilities;

(9) Public or private summer day camps or overnight camps such as, but not limited to, those operated by the Boy or Girl Scouts, the YMCA or YWCA, by church or religious organizations or by organizations representing disabled children which operate less than

ninety (90) days per year, and other similar businesses or programs as determined by the department;

(10) To facilities, except as provided in subsection (b), operated in connection with a church, business establishment, recreational facility, or similar activity, where children are cared for during short periods of time, not to exceed nine (9) hours per week, while the parents or other custodians of the children are engaged in short-term activities, such as shopping, or recreation, but not including employment. As evidence of their exempt status, such facilities shall maintain records which include children's names, dates, and times in attendance, parents' names and whereabouts, and telephone numbers of persons to contact in the event of an emergency

(11)(A) To any program or facility operated by, or in affiliation with, any Boys and Girls Club which provides care for school-aged children and which holds membership in good standing with Boys and Girls Clubs of America and which is certified as being in compliance with the purposes, procedures, voluntary standards and mandatory requirements of Boys and Girls Clubs of America.

(B) Any such Boys and Girls Club, which applies to participate in state or federally funded programs which require child care licensing by the state as a term of eligibility, may elect to apply to the department for child care licensing and regulation. Upon meeting departmental standards, the Boys and Girls Club may be licensed as a child care center/provider.

(C) The department is hereby authorized to grant a waiver from any rule concerning grouping of children and adult/child ratios for child care centers to any Boys and Girls Club which falls within the provisions of both subdivisions (11)(A) and (B) and which is providing after-school child care to mixed groups of school-aged children.

(b)(1) Exempt programs under subdivisions (a)(4), (a)(7) and (a)(10) shall post a sign stating, "This facility is not required to be licensed by the state of Tennessee as a child-caring agency."

(2) When a parent, custodian or guardian initially registers a child with exempt programs under subdivisions (a)(4), (a)(7) and (a)(10) which are required to post a sign pursuant to this subsection, the parent, custodian or guardian shall sign a form indicating that the parent, custodian or guardian has been advised and understands that the program is not licensed and is not required to be licensed by the state of Tennessee as a child-caring agency. The same language which is required to be placed on the sign shall be printed on such form at least in 16-point type with a signature line for the parent, custodian or guardian immediately following such language. The signed form shall be maintained with the records of the exempt entity.

#### SECTION 5.

71-3-504. Injunctions against unlicensed operations.

(a) The department may, in accordance with the laws of the state of Tennessee governing injunctions, maintain an action in the name of the state of Tennessee to enjoin any person, partnership, association, corporation or other entity from establishing, conducting, managing or operating any place or facility providing services to children without having a license as required by law, or from continuing to operate any such place or facility following suspension of a license or following the effective date of the denial or revocation of a license.

(b) In charging any defendant in a complaint for such injunction, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, conduct, manage or operate a place, home or facility of any kind which is a child care agency as defined in this part or to charge that the defendant is about to do so without having in effect a license as required by law, or that the defendant continues to operate any such place or facility following suspension of a license, or following the effective date of the denial or revocation of a license,

without averring any further or more particular facts concerning the case. Refusal to obey the inspection order may be punished as contempt.

#### SECTION 6.

##### 71-3-505. Criminal violations.

(a) Any person or entity operating a child care agency, as defined in § 71-3-501, without being licensed by the department or who continues to operate such agency while a suspension of the license is in effect, or who operates a child care agency following the effective date of a denial or revocation of a license, commits a Class A misdemeanor.

(b) Each day of operation without an effective license constitutes a separate offense.

#### SECTION 7.

##### 71-3-506. Public agencies-Inspection and report.

(a) Any child care agency, as defined in § 71-3-501, which is under the direct management of an administrative department of the state, a county, or a municipality, or any combination of these three (3), shall not be subject to license, but shall meet the minimum standards for programs and care as required of such child care agencies.

(b)(1) The commissioner, through the commissioner's authorized representative, shall make periodic inspections of such publicly administered child care agencies.

(2) The report of such inspections and recommendations shall be made in writing to the executive head of the publicly administered child care agency the board of directors, if any, and/or the division of the state, county or municipal government which has the duty under the law to operate such agency.

(c) It is the duty of the department to cooperate with the publicly administered agencies herein referred to, to implement recommended changes in program and policies.

(d) If, within a reasonable time, such standards and recommendations are not met, it shall be the duty of the commissioner to make public in the community in which this agency is located, the report of the above-mentioned inspection.

(e)(1) If violations of the standards for child care agencies are found and are not corrected within a reasonable time, or, if serious violations are found which meet the requirements which would justify the suspension of a child care agency's license pursuant to § 4-5-320, the department may file a complaint in the chancery court of the county in which the child care agency is located.

(2) The chancery court shall have jurisdiction to hear the complaint and to enter any orders or injunctive relief necessary to ensure the correction of such violations or to suspend the operations of the facility for the protection of the children who are in the care of the child care agency.

#### SECTION 8.

71-3-507. Criminal history violation information required of persons having access to children; Review of vulnerable persons registry; Verification; Exclusion from access to children.

(a)(1) Each person:

(A) applying to work with children as a paid employee with a child care agency as defined in § 71-3-501, or with the department in any position in which any significant contact with children is likely in the course of the person's employment; or

(B) a new volunteer who is expected to provide volunteer services in excess of twenty (20) hours per month in a child care agency, or with the department, in any position in which any significant contact with children is likely in the course of the person's volunteer service; or

(C) any person aged fifteen (15) years and above who resides in a child care agency which is being licensed initially or who moves into a child care agency following initial licensure,

shall complete a criminal history disclosure form in a manner approved by the department, and shall agree to release all records involving the person relating criminal history of such person to the child care agency and to the department of human services for the purpose of verifying the

accuracy of criminal violation information contained on the disclosure form required by this section.

(2)(A) Such persons shall also supply a fingerprint sample in a manner prescribed by the Tennessee bureau of investigation, and shall submit to a fingerprint based criminal history records check to be conducted by the Tennessee bureau of investigation, and shall submit to a review of such person's status on the department of health's vulnerable persons registry under title 68, chapter 11, part 10.

(B) The entity which is seeking to employ the person or which is seeking to permit the person to volunteer, or which has a person residing in the agency shall be responsible for obtaining, and submitting the fingerprint sample and any information necessary to process the criminal history review, to the Tennessee bureau of investigation within ten (10) days of the first day of beginning employment or volunteer status, or, for residents of agencies, within ten (10) days of the application for an initial license for the facility in which the person resides or within ten (10) days after the resident moves into the child care agency.

(3) The disclosure forms shall include at a minimum the following information:

(A) The social security number of the applicant, resident or volunteer;

(B) The complete name of the applicant, resident or volunteer;

(C) Disclosure of information relative to any violations of the law, including pending criminal charges of any kind, and any conviction involving a sentence or suspended or reduced sentence a release of all records involving the person's criminal background history; and

(D) A space for the applicant, volunteer or resident to state any circumstances which should be considered in determining whether to allow the person who has a criminal history to be employed or to remain as a resident in the agency or to provide volunteer services.

(4)The form shall notify the applicant, volunteer or resident that falsification of required information may subject the person to criminal prosecution, and that the person's employment or volunteer status with the agency or the department is conditional pending a criminal records history review regarding the person's criminal history status. The form shall also state, for the department of human services, that if the person is a resident of the child care agency, that a finding of criminal history may affect the agency's ability to remain licensed or to renew a license if the person remains as a resident of the agency.

(5)A copy of the disclosure form shall be maintained in the child care agency's records for review by the department, and the department shall maintain a copy of the disclosure form in the records of the applicant for employment or volunteer services with the department.

(b)(1) The disclosure form, or information contained on the form, obtained pursuant to this section, together with the fingerprints of the applicant, volunteer or resident shall be submitted by the child care agency for its applicants, volunteers or residents, and by the department for its applicants, to the Tennessee bureau of investigation in such format as required by the bureau.

(2)(A) The Tennessee bureau of investigation shall compare the information and the fingerprint sample received with the computer criminal history files maintained by the bureau and to the extent permitted by federal law, with federal criminal databases, to verify the accuracy of the criminal violation information, and shall conduct the fingerprint and criminal history background check for the person pursuant to § 38-6-109. It shall report the existence of any criminal history involving the person to the requesting child care agency which submitted the form and the fingerprint sample.

(B) If the history and sample were submitted by a licensed child care agency, a copy of a report which has indicated the existence of a criminal history shall also be sent to the department.



(C) The bureau shall also report the existence of a criminal history of the applicant for employment or volunteer services to the department for persons whom the department has submitted.

(3) The results of the inquiry to the Tennessee bureau of investigation shall be recorded in the records of the child care agency for the person for whom the background check is sought.

(4) If the information on the form appears to have been falsified, the Tennessee bureau of investigation shall report such finding to the department. The department shall notify in writing the appropriate district attorney general of such falsification.

(5)(A) The department of human services shall pay to the Tennessee bureau of investigation the cost of processing the criminal history background fingerprint check requested by the agency or by the department as set forth in § 38-6-109. Payment of such costs are to be made in accordance with § 38-6-103 and 38-6-109.

(B) The child care agency shall be responsible for all costs associated with the obtaining, handling and processing of the fingerprint sample which is submitted to the Tennessee bureau of investigation.

(C) The department shall only be responsible for payment for one (1) processing fee that is required by the Tennessee bureau of investigation. If the fingerprint sample is rejected, and if any further costs are required to process the fingerprint, the child care agency is responsible for any further costs, regardless of the number of efforts required to obtain a valid fingerprint sample.

(c) The agency, and the department for its employees, shall also utilize the information on the criminal history disclosure form to conduct an inquiry of the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10 for a review of the person's status on such registry. The results of the inquiry to the registry shall be maintained in the applicant's, volunteer's or resident's records.

(d) Pending the outcome of the fingerprint background check and the review of the department of health's vulnerable person's registry, the applicant for employment or for a volunteer services position shall be conditional with the agency or with the department, and shall be dependent upon the outcome of the background check.

(e)(1)(A)(i) Conviction of an offense, or a lesser included offense, involving the physical, sexual or emotional abuse or gross neglect of a child or which constitutes conviction of an offense involving violence against a child, or any person, or conviction of an offense involving the manufacture, sale possession or distribution of any drug, or a no contest plea to such offenses, and any pending warrants, indictments or presentments for such offenses, or the identification of the individual on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, shall disqualify the individual from employment with, or from providing any volunteer services to children in, or from having any access whatsoever to children as a resident of, a child care agency as defined by this part, or with the department.

(ii) Any offense and any pending warrants, indictments or presentments involving driving under the influence of an intoxicant during which a child was in the vehicle of the person on whom the criminal background check was obtained, or any felony offense, and any pending warrants, indictments or presentments for any felony offense, involving such person in which the person caused, allowed or permitted a child to be present, shall disqualify the person from providing care or transportation for any child in the child care agency.

(B)(i) Upon receipt of the report from the Tennessee bureau of investigation, the child care agency shall immediately review the report to determine if the person for whom the criminal background check was requested is within the prohibited categories under subdivision (A), and, if necessary, shall immediately consult with the department to further determine if the individual is within the prohibited categories in subdivision (A).

(ii) The child care agency, and the department for its employees, shall immediately exclude an individual from employment, volunteer services or, if a resident, shall exclude the resident from access to children in the child care agency, if the results of the criminal background check or review of the vulnerable person's registry demonstrate to the agency, or upon further review by the department demonstrate, that the criminal history of such individual is within the prohibited categories established in subdivision (A). If an exemption from the exclusion is provided for by rule of the department pursuant to subsection (f), such person shall remain excluded until it is determined by the department whether there is a basis for an exception from the exclusion.

(iii) The failure of a child care agency to exclude a person with a prohibited criminal history at child care agency from employment with the agency, or from the provision of volunteer services to children in the agency, or the failure, as determined by the department, to adequately restrict the access of a resident in a child care agency to children being cared for by the agency, shall subject the child care agency to immediate suspension of the agency's license by the department.

(2) Any person who is excluded based upon the results of the criminal history background review may appeal the exclusion to the department within ten (10) days of the mailing date of the notice of such exclusion to the subject person.

(3) If timely appealed, the department shall provide an administrative hearing pursuant to title 4, chapter 5, part 3 in which the appellant may challenge the accuracy of the report, and may challenge the failure to grant an exception to the exclusion required by this subsection if a rule for such purpose has been promulgated by the department pursuant to subsection (f).

(4) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to

show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal charge except to show that such charge was, or since the report was generated, has been dismissed, nolle or has resulted in an acquittal.

(f)(1) The state agencies may by rule provide for a review process which utilizes an advisory group of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and child care providers to consider exemptions from the criminal background or the vulnerable persons registry review exclusion established by this section.

(2) Any exemption granted must be based upon extenuating circumstances which would clearly warrant consideration of such exemption and such determination shall be made in writing in the record of the department and of the child care agency and shall be open to public inspection.

(3) If an exemption rule is promulgated by the state agency, the person who is not granted an exception to the exclusion upon review of the person's criminal history may have this issue considered in an administrative appeal as provided by subsection (e).

(g)(1)(A)(i) a child care agency, as defined in § 71-3-501 or 37-5-501 or a child care program as defined in § 49-1-1002;

(ii) the department of children's services;

(iii) the department of education

(iv) the department of human services;

(v) the department of mental health/mental retardation; and

(vi) any other state agency or any person or entity that contracts with the state of

Tennessee,

may require all persons:

(B)(i) applying to work or volunteer, or currently working, in any capacity as a paid employee, or volunteering, with children with the entities in subdivision (A); or

(ii) an applicant for a foster parent position or an applicant to be an adoptive parent, or a current foster parent or a current prospective adoptive parent with the department of children's services;

(iii) or a person fifteen (15) years of age or older who resides in a child care agency licensed pursuant to this part,

and who are not otherwise required by the provisions of subsection (a)(1) of this section or who are not otherwise required by any other provision of law to undergo a criminal background check of any kind, to complete a criminal history disclosure form and agree to release all records involving the person relating criminal history of such person to the entities described in subdivision (1)(A) and, if further required by the requesting entity, to supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee bureau of investigation, and to submit to a review of the person's status on the department of health's vulnerable persons registry under title 68, chapter 11, part 10;

(C) Nothing in this subsection shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment or for volunteer service positions is made voluntary, repealed or superseded in any manner by the provisions of this subsection, and the provisions of this section are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.

(2) The disclosure form shall contain the information described in subsection (a)(3) and (4).

(3) A copy of the disclosure form shall be maintained in the requesting entity's records of the persons for whom the background check is sought.

(4)(A) The form obtained pursuant to this section, together with the fingerprints of the person shall be submitted by the entity authorized by this subsection to do so, to the Tennessee bureau of investigation in such format as required by the bureau.

(B) The Tennessee bureau of investigation shall compare the information received and the fingerprints of the individual with the computer criminal history files maintained by the bureau and, to the extent permitted by federal law, with federal criminal databases to verify the accuracy of the criminal violation information pursuant to § 38-6-109, and shall report the existence of any criminal history involving the person to the requesting entity, and if the report was made to an entity which is licensed by any state agency, the bureau shall also send a copy of the report showing the criminal history to the state agency.

(C)(i) Pending the outcome of the background check, if required, the applicant for employment or as a foster parent or as an adoptive parent, for contract services, or for a volunteer services position, shall be conditional with the child care agency, the state contractor or with the state agency, and shall be dependent upon the outcome of the background check.

(ii) The employment status of persons for whom a post-employment criminal background check was conducted, or the status of volunteers or residents of a child care agency for whom criminal background check was conducted after license approval, and who were not otherwise subject to a pre-status applicant background check and the exclusionary provisions provided in this section, shall be governed by any regulations which may govern their status in a regulated entity or by applicable employment law.

(D) The results of the inquiry to the Tennessee bureau of investigation shall be maintained by the entity requesting the background check in the records of the person for whom the background check is sought.

(E) If the information on the form appears to have been falsified, the Tennessee bureau of investigation shall report such finding to the requesting entity. That entity, or if the entity is licensed by a state agency, the state agency, shall notify in writing the appropriate district attorney general of such falsification.

(F) Any costs incurred by the Tennessee bureau of investigation in conducting such investigations of such applicants shall be paid by the entity which requests such investigation and information. Payment of such costs is to be made in accordance with the provisions of § 38-6-103 and § 38-6-109.

(5) The requesting entity may also utilize the information on the form to conduct an inquiry of the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10 for a review of the person's status on such registry. The results of the inquiry to the registry shall be maintained in the applicant's, employee's, volunteer's or resident's records.

(h)(1)(A) As a supplemental method of criminal background history review for any applicants for employment or volunteer status with child care agencies or child care program, or with the state agencies or their contractors, as listed in subsection (g)(1) or with the entities which the state agencies may regulate, or for residents of new child care agencies, or for current employees or volunteers of child care agencies or for current residents of child care agencies, those entities listed in subsection (g)(1) which have an agreement for access to the Tennessee bureau of investigation's criminal history database, may require such persons to submit a disclosure form as set forth in subdivisions (a)(3) and (a)(4), a copy of which shall be maintained with the requesting entity's records, and agree to release all records involving the person relating criminal history of such person.

(B) Those entities with such an agreement may then access directly the Tennessee bureau of investigation's Tennessee Crime Information Computer (T.C.I.C.) system and conduct a name search of Tennessee criminal history records by using only the information

contained on the disclosure form completed pursuant to subdivision (A), or using any other information available to the searching entity.

(2) If information obtained by this method indicates that there exists, or may exist, a criminal record on the individual, the entity conducting the search may further review the criminal record history with the individual and, as appropriate, with the entity with whom the individual who is the subject of the review is associated, to obtain further verification. The requesting entity, at its own cost, may also request fingerprint samples as otherwise authorized by this section and submit the fingerprints for a complete Tennessee and federal criminal history background review pursuant to this section and § 38-6-109.

(3) The results of the search shall be maintained in the records of the person on whom the search was made and shall be subject to review by the regulating entities.

(4) Nothing in this subsection shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment or for volunteer service positions is made voluntary, repealed or superseded in any manner by the provisions of this subsection, and the provisions of this section are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.

(i)(1)(A)(i) For criminal history information which is obtained by the processes established under subsections (g) and (h), conviction of an offense, or a lesser included offense, involving the physical, sexual or emotional abuse or gross neglect of a child or which constitutes conviction of an offense involving violence against a child or any person or conviction of a crime involving the manufacture, sale possession or distribution of any drug, or a no contest plea to such crimes, and any pending warrants, indictments or presentments for such crimes, or the identification of any person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, shall disqualify such person from employment with, or from providing any volunteer services to children in,



or from having any access whatsoever to children as a resident of, a child care agency as defined by this part, or title 37, chapter 5, part 5 or a child care program as defined in title 49, chapter 1, part 10, or with the requesting entity.

(ii) Any offense and any pending warrants, indictments or presentments involving driving under the influence of an intoxicant during which a child was in the vehicle of the person on whom the criminal background check was obtained, or any felony offense, and any pending warrants, indictments or presentments for any felony offense, involving such person in which the person caused, allowed or permitted a child to be present, shall disqualify the person from providing care or transportation for any child in the child care agency.

(2) The entity shall immediately exclude an individual from employment or volunteer services with children, or, if a resident, from access to children in a child care agency as defined in title 37, chapter 5, part 5 or title 71, chapter 3, part 5, or child care program as defined in title 49, chapter 1, part 10, if the results of the criminal background check demonstrate, that the criminal history of such individual is within the prohibited categories established in subdivision (A). If an exemption from the exclusion is provided for by rule of the state agency pursuant to subsection (f), such person shall remain excluded until it is determined by the department whether there is a basis for an exception from the exclusion.

(iii) The failure of a child care agency as defined by this part or title 37, chapter 5, part 5 or a child care program as defined in title 49, chapter 1, part 10, to exclude a person with a prohibited criminal history from employment with the agency, or from the provision of volunteer services to children, or the failure, as determined by the regulating entity, to adequately restrict the access to children being cared for by the regulated entity, shall subject the regulated entity to immediate suspension of the entity's license or certificate by the regulating entity

(j) Any person disqualified based upon the results of the criminal history background review under subsections (g) and (h) may appeal that determination to a state agency which has made the request as provided in subdivisions (e)(2)-(e)(4).

(k) It is unlawful for any person to falsify any information required on the disclosure form required by this section. A person who knowingly fails to disclose on the disclosure form required information or who knowingly discloses false information or who knowingly assists another to do so shall be guilty of a Class A misdemeanor.

#### SECTION 9.

71-3-508. Inspection of persons or entities providing child care.

(a) It is the duty of the department, through its duly authorized agents, to inspect at regular intervals, without previous notice, all child care agencies or suspected child care agencies, as defined in § 71-3-501.

(b)(1) The department is given the right of entrance, privilege of inspection, access to accounts, records, and information regarding the whereabouts of children under care for the purpose of determining the kind and quality of the care provided to the children and to obtain a proper basis for its decisions and recommendations.

(2) If refused entrance for inspection of a licensed, approved or suspected child care agency, the chancery or circuit court of the county where the licensed, approved or suspected child care agency may be located may issue an immediate ex parte order permitting the department's inspection upon a showing of probable cause, and the court may direct any law enforcement officer to aid the department in executing such order and inspection. Refusal to obey the inspection order may be punished as contempt.

(3) Except where court orders prohibit or otherwise limit access, parents or other caretakers of children in the care of a child care agency licensed pursuant to this part shall be permitted to visit and inspect the facilities and observe the methods for the care of their children at any time during which the children are in the care of the agency and, except

those records of other children in the care of the agency and their parents or caretakers, shall further be permitted to inspect any records of the agency which are not privileged, or are not otherwise confidential, as provided by law or regulation, and the parents' or caretakers' access for these purposes shall not be purposely denied by the agency.

(c) Any violation of the rights given in this section is a Class A misdemeanor.

#### SECTION 10.

71-3-509. Violations of licensing regulations; probation; civil penalties; suspension, denial and revocation of licenses; appeal procedures.

(a) If any complaint is made to the department concerning any alleged violation of the laws or regulations governing a child care agency, the department shall investigate such complaint and shall take such action as it deems necessary to protect the children in the care of such agency.

(b)(1) If, during the licensing period, the department determines that a child care agency is not in compliance with the laws or regulations governing its operation, and if after reasonable written notice to the agency of the violation, the department determines that the violation remains uncorrected, the department may place the licensed agency on probation for a definite period as determined by the department, and the department shall require the posting by the agency of the notice of probation. The department shall provide the agency a written basis describing the violation of the licensing rules that support the basis for the probationary status.

(2)(A) If placed on probation, the agency shall immediately post a copy of the probation notice, together with a list provided by the department of the violations which were the basis for the probation, in a conspicuous place as directed by the department and with the agency's license, and the agency shall immediately notify in writing the custodians of each of the children in its care of the agency's status, the basis for the probation and of its right to an informal review of the probationary status.

(B) If the agency requests within two (2) business days of the imposition of probation, either verbally or in writing to the department's licensing staff which imposed the probation, the department shall informally review the probationary status by a licensing supervisor or other designee who was not involved in the decision to impose the probation. The agency may submit any written or oral statements as argument to the licensing supervisor or designee within five (5) business days of the imposition of the probation. Written and oral statements may be received by any available electronic means. The licensing supervisor or designee shall render a decision in writing upholding, lifting or modifying the probationary status within seven (7) business days of the imposition of the probation. The decision of the licensing supervisor or designee shall be final.

(3) If the probationary period imposed exceeds thirty (30) business days, and if the licensing supervisor or designee did not overturn the probation under subdivision (B), the agency may also appeal such action in writing to the commissioner within five (5) business days of the receipt of the notice of the agency's probationary status. If timely appealed, the department shall conduct an administrative hearing pursuant to the contested case provisions of §§ 4-5-301 et seq. concerning the department's action within fifteen (15) business days of receipt of the appeal and shall render a decision in writing within seven (7) business days following conclusion of the hearing. The hearing officer may uphold, modify or lift the probation.

(4)(A) If the agency has appealed the probationary status as established by subdivisions (2) or (3), and if the agency requests further review of its continued or modified probationary status, the department shall review the agency's status, and may terminate or modify a probationary period if it determines that the purpose of the probationary period has been served and if the violations for which the probation was imposed have been satisfactorily corrected.

(B) If the department determines that the violations which were the basis for the probation have remained uncorrected, and the remaining probationary period exceeds thirty (30) business days, the department shall notify the licensee, and the licensee may further appeal such determination as provided in subdivision (3).

(5) The provisions of this subsection shall be discretionary with the department, and shall not be a prerequisite to any licensing action, to impose a civil penalty or to suspend, deny or revoke a license of a child care agency.

(c)(1) If the department determines that there exists any violation with respect to any person or entity required to be licensed pursuant to this part, the department may assess a civil penalty against such person or entity in an amount not to exceed one thousand dollars (\$1,000) for each separate violation of a statute, rule or order pertaining to such person or entity. Each day of continued violation constitutes a separate violation.

(2) The department shall by rule establish a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to this subsection. In assessing civil penalties, the following factors may be considered:

(A) Whether the amount imposed will be a substantial economic deterrent to the violator;

(B) The circumstances leading to the violation and the agency's history of violations;

(C) The severity of the violation, the extent of deviation from the statutes, rules or orders and the risk of harm to the children in care of the person or entity caused by the violation;

(D) The economic benefits gained by the violator as a result of noncompliance;

(E) The agency's efforts to comply with the licensing requirements; and

(F) The interest of the public.

(3) The department shall assess the civil penalty in an order which states the reasons for the assessment of the civil penalty, the factors used to determine its assessment and the amount of the penalty.

(4) The order may be served on the licensee personally by an authorized agent of the department who shall complete an affidavit of service, or the order may be served by certified mail, return receipt requested.

(5) The licensee may appeal the penalty to the board of review by filing a request for an appeal in writing with the commissioner within ten (10) days of the service of the order.

(6)(A) Civil penalties assessed pursuant to this subsection shall become final ten (10) days after the date an order of assessment is served if not timely appealed, or, if timely appealed, within seven (7) days following entry of the board's order unless the board's order is stayed.

(B) If the violator fails to pay an assessment when it becomes final, the department may apply to the chancery court for a judgment and seek execution of such judgment.

(C) Jurisdiction for recovery of such penalties shall be in the chancery court of Davidson county.

(7) All sums recovered pursuant to this subsection shall be paid into the state treasury, but shall be earmarked to the department for the improvement of the quality of child care services in this state.

(8) The provisions of this subsection relative to civil penalties shall be discretionary with the department, and shall not be a prerequisite to any licensing action to suspend, deny or revoke a license of a child care agency.

(d)(1) If the department determines that any applicant for a temporary license or for the renewal of an existing license has failed to attain or maintain compliance with licensing law or regulations after reasonable notice of such failure and a reasonable opportunity to demonstrate compliance with licensing law or regulations, it may deny the application for the new or renewed

license; provided, however, the department at any time may deny a temporary license if the applicant fails to meet the initial requirements for its issuance; and, provided, further, if the department determines that repeated or serious violations of licensing regulations warrant the denial of the license, then, notwithstanding any provisions of § 4-5-320 or this subsection to the contrary, the department may seek denial of the license regardless of the licensee's demonstration of compliance either before or after the notice of denial of the application.

(2) Notwithstanding the provisions of § 4-5-320, the notice of denial may be served personally by an authorized representative of the department who shall verify service of the notice by affidavit, or the notice may be served by certified mail, return receipt requested.

(3) If application for the temporary, annual, or extended license is denied, the applicant may appeal the denial by requesting in writing to the department a hearing before the child care board of review within ten (10) days of the personal delivery or mailing date of the notice of denial. Failure to timely appeal shall result in the expiration of any existing license immediately upon the expiration of the time for appeal.

(4) The hearing upon the denial shall be heard by the board of review within thirty (30) days of the date of service of the notice of denial; provided, however, for good cause as stated in an order entered on the record, the board or the administrative law judge or hearing officer may continue the hearing; provided, however, in no event, however, shall the hearing be continued unless the board, administrative law judge or hearing officer makes a finding on the record that the children in the care of the child care agency are in no immediate danger from the agency's continued operation. A hearing may also be continued pursuant to the circumstances of subsection (i).

(5)(A) If timely appeal is made, pending the hearing upon the denial, the child care agency may continue to operate pending the decision of the board of review unless the license is summarily suspended as provided in subsection (f).

(B) The board, as part of its decision regarding the status of the applicant's license, may direct that the child care agency be allowed to operate on a probationary or conditional status, or may grant the license with any restrictions or conditions on the agency's authority to provide care.

(e)(1) If the department determines that any existing licensee has failed to maintain compliance with licensing laws or regulations after reasonable notice of such failure and a reasonable opportunity to demonstrate compliance with the licensing regulations, the department may revoke the license; provided, however, if the department determines that repeated or serious violations of licensing regulations warrant the revocation of the license, then, notwithstanding any provisions of § 4-5-320 or this subsection to the contrary, the department may seek revocation of the license regardless of the licensee's demonstration of compliance either before or after the notice of revocation.

(2) Notwithstanding the provisions of § 4-5-320, the notice of revocation may be delivered personally by an authorized representative of the department who shall verify service of the notice by affidavit or the notice may be delivered by certified mail, return receipt requested.

(3) If the license is revoked, the licensee may appeal the revocation by requesting in writing to the department a hearing before the child care board of review within ten (10) days of the personal delivery or mailing date of the notice of revocation. Failure to timely appeal shall result in the expiration of any existing license immediately upon expiration of the time for appeal.

(4) The hearing upon the revocation shall be heard by the board of review within thirty (30) days of the date of service of the notice of revocation; provided, however, for good cause as stated in an order entered on the record, the board or the administrative law judge or hearing officer may continue the hearing; provided, however, in no event, however, shall the hearing be continued unless the board, administrative law judge or hearing officer



makes a finding on the record that the children in the care of the child care agency are in no immediate danger from the agency's continued operation. A hearing may also be continued pursuant to the circumstances of subsection (i).

(5)(A) If timely appeal is made, pending the hearing upon the revocation, the child care agency may continue to operate pending the decision of the board of review unless the license is summarily suspended as provided in subsection (f).

(B) The board, as part of its decision regarding the status of the applicant's license, may direct that the child care agency be allowed to operate on a probationary or conditional status, or may allow the license to remain in effect with any restrictions or conditions on the agency's authority to provide care.

(f)(1) If the department determines at anytime that the health, safety or welfare of the children in care of the child care agency imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of the license may be ordered by the department pending any further proceedings for revocation, denial or other action. If the department determines that revocation or denial of the license is warranted following suspension, those proceedings shall be promptly instituted and determined as authorized by this part.

(2) In issuing an order of summary suspension of a license the department shall use the following procedures:

(A) The department shall proceed with the summary suspension and notify the licensee of the opportunity for an informal hearing before the department within seven (7) business days of the issuance of the order of summary suspension.

(B) The notice provided to the licensee may be provided by any reasonable means and shall inform the licensee of the reasons for the action or intended action of the agency and of the opportunity for an informal hearing before the department.

(C) The informal hearing described by this subdivision shall not be required to be held under the contested case provisions of § 4-5-301 et seq. The hearing is intended to provide an informal, reasonable opportunity for the licensee to present to the department the licensee's version of the circumstances leading to the suspension order. The sole issue to be considered is whether the public health, safety or welfare imperatively required emergency action by the department.

(D) Subsequent to the hearing on the summary suspension, the department may proceed with revocation or denial of the license or other action as authorized by this part, regardless of the decision concerning summary suspension of the license.

(g)(1) In determining whether to deny, revoke or suspend a license, the department may choose to deny, revoke or suspend only certain authority of the licensee to operate and may permit the licensee to continue operation, but may restrict or modify the licensee's authority to provide certain services or perform certain functions, including, but not limited to: transportation or food service, enrollment of children at the agency, the agency's hours of operation, the agency's use of certain parts of the agency's physical facilities or any other function of the child care agency which the department determines should be restricted or modified to protect the health, safety or welfare of the children.

(2) The actions authorized by this subsection may be appealed as otherwise provided in this part for any denial or revocation.

(h)(1) When an application for a license has been denied, or a license has been revoked, on one (1) occasion, the child care agency may not reapply for a license for a period of one (1) year from the effective date of the denial or revocation order if not appealed, or, if appealed, from the effective date of the board's or reviewing court's order.

(2) If application for a license has been denied, or a license has been revoked, on two (2) occasions, the child care agency may not reapply for a license for a period of two (2)

years from the effective date of the denial or revocation if not appealed or, if appealed, from the effective date of the board's or reviewing court's order.

(3) If an application for a license has been denied, or a license has been revoked on three (3) occasions, the agency shall not receive another license for the care of children.

(4) No person who served as full or part owner or as director or as a member of the management of a child care agency shall receive a license to operate a child care center if that person participated in such capacity in a child care agency which has been denied a license, or which had a license revoked, on three (3) occasions.

(5)(A) The time restrictions of subdivisions (1) and (2) may be waived by the board of review in the hearing in which the denial or revocation is sustained, or, if requested by the former licensee in writing to the commissioner, in a separate subsequent hearing before the board of review or, in the discretion of the commissioner, upon review by the commissioner.

(B) The agency must show to the board's or the commissioner's satisfaction that the agency has corrected the deficiencies which led to the denial or revocation, and that the child care agency can demonstrate that it has the present and future ability, and is willing, to maintain compliance with licensing laws or regulations. The decision of the board or the commissioner shall be reduced to an order, which shall be a final order pursuant to title 4, chapter 5, part 3, and may be appealed pursuant to § 4-5-322.

(C) No waiver may be granted for any permanent restriction which has been imposed pursuant to subdivision (3).

(i)(1) In conducting hearings before the board of review, it is the legislative intent that such hearings be promptly determined consistent with the safety of the children in the care of the child care agency appealing the department's licensing action and with the due process rights of the license applicants or licensees.

(2) If, however, the administrative procedures division of the office of the secretary of state certifies by letter to the recording secretary of the board of review that the division's

contested case docket prevents the scheduling of a hearing before the board within the initial timeframes set forth in this part, then the department shall have the authority to obtain an administrative law judge by contract with a private attorney or with another state agency in order to conduct the proceedings before the board, or if unable to obtain an administrative law judge at the service rates for administrative law judges charged state agencies by the administrative procedures division, the department may use a hearing officer from the department's administrative review section to conduct proceedings before the board. The substitute administrative law judge or hearing officer shall have all authority as an administrative law judge of the department of state. The hearing may be continued for the purpose of obtaining a substitute judge or hearing officer.

(3) A hearing may also be continued if the of the secretary of state's office certifies pursuant to this subsection that it cannot set a hearing within the time frame set forth in this subdivision.

## SECTION 11.

### 71-3-510. Board of review-Composition.

(a)(1) Actions by the departments of human services and children's services to deny or revoke or to otherwise limit any license, except for the summary suspension of a license, or to review any civil penalties imposed by the department of human services, shall be reviewed by a child care agency licensing board of review.

(2) In reviewing any licensing action pursuant to this part or pursuant to title 37, chapter 5, part 5, the board of review, shall consist of nine (9) persons and shall include the commissioners of health and education or their designees, the chair of the advisory council of the department of children's services, and the chair of the advisory board of the department of human services, or their designees from their respective advisory council or board as appointed by the commissioners of the departments of children's services and human services, a member from one (1) current or previous standards committee from

each department, and three (3) persons selected from a pool of up to twelve (12) representatives at large to be selected by the six (6) stated above as follows:

(A) Four (4) shall be selected to serve for one (1) year;

(B) Four (4) shall be selected to serve for two (2) years; and

(C) Four (4) shall be selected to serve for three (3) years. Thereafter, each at-large representative shall be selected to serve for terms of three (3) years or until their successors are selected.

(b) A quorum of the board shall consist of five (5) persons.

(c) In establishing a quorum for the board to conduct its review of the licensing actions of the departments, the chair shall randomly select the names of the at-large members of the board for the board's current licensing review action from the pool of twelve (12) persons selected pursuant to subsection (a) until the nine (9) member composition is reached or, if that is not possible, until a quorum is reached.

(d) The commissioner of education or the commissioner's designee shall serve as the chair of the board until a chair is selected by the board. The board shall elect a vice-chair who shall serve in the absence of the chair. If the chair resigns, is unable to perform the duties of the chairperson or is removed or the chair's term on the board expires, the commissioner of education shall appoint a new chair until the board can elect a chair. The vice-chair shall have authority to sign all orders of the board in the absence of the chair and for actions of the panels under subsection (f).

(e) The recording secretary for the board shall be a member of the professional staff of the department of human services based upon an inter-agency agreement for the services of the recording secretary as the commissioners of the departments of children's services and human services may deem appropriate, and any person selected by the agreement of the departments shall serve as recording secretary for the board. The recording secretary shall be responsible for scheduling the board's meetings and arranging for the facilities to conduct the hearings of

the board for both departments and such other duties as may be necessary to accommodate the business of the board. The recording secretary shall serve without additional compensation from the department.

(f) In order to complete the work of the board, the chair may appoint one or more panels of the board with a quorum of five (5) members, at least two (2) of whom shall be randomly selected at-large members selected by the chair. The chair of the board of review shall appoint the chair of the panel. The panel shall have complete authority to hear any case under the board's jurisdiction and shall have complete authority to enter any necessary orders concerning licensing actions conducted before the board of review. Any orders of the panel shall be signed by the chair of the panel, or by the board chair or vice-chair.

(g) Regulations governing the board's procedure for review of any licensing action shall be established by the department of human services, in consultation with the department of children's services, in accordance with the provisions of title 4, chapter 5, part 2.

(h) Any applicant or licensee may petition the chancery court of Davidson County pursuant to § 4-5-322 for judicial review of the board's decision.

(i)(1) All members of the review board shall serve without pay.

(2) The three (3) members at-large who are selected to serve on the board, the representatives of the advisory board or advisory council of the departments, and the members from the standards committees of the departments shall receive reimbursement in conformity with law and regulations for their expenses incurred in the performance of their official duties pursuant to the provisions of this part. Such expenses for the representatives from the advisory board or council and the standards committees from the respective department shall be paid from the funds appropriated to the departments.

(3) The expenses for the at-large members shall be shared equally by the departments of children's services and human services.

(4) All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive state travel regulations applicable to state employees.

## SECTION 12.

### 71-3-511. Licensing standards committees.

(a)(1) The commissioner of the department of human services shall appoint a standards committee composed of sixteen (16) citizens, four (4) from each grand division of the state, and four (4) at large for the purpose of developing or reviewing standards and regulations for each class of child care agency defined in this part.

(b) For any new class of child care agency as defined in this part, the standards committee shall develop and recommend to the commissioner the standards and regulations for that new class of child care agency. The standards and regulations of each existing class of child care agency shall be reviewed by a standards committee beginning every four (4) years following the date of submission of its last recommendations or more frequently as the commissioner may direct.

(c) The standards committee shall act in an advisory capacity to the commissioner in recommending any initial standards or regulations for any new class of child care agency or any changes to the existing standards or regulations of any class of child care agency.

(d) The committee shall cease to exist upon submitting its recommendations to the commissioner, but may be re-established by the commissioner at anytime to further review its recommendations or to consider additional standards or regulations or to consider revisions to the standards or regulations.

(e) When developing standards for the licensing of "prescribed child care centers," the standards committee for that class shall also be composed of the chief medical officer for the state, appointed pursuant to § 68-1-102(c), and four (4) members of the board for licensing health care facilities, as designated by the commissioner of health.

(f) In making appointments to the committee, the commissioner shall strive to ensure that at least one (1) person serving on the committee is sixty (60) years of age or older and that at least one (1) person serving on the committee is a member of a racial minority.

(g) The members of the committee shall not receive any compensation for their services but shall be reimbursed for their travel to and from the committee meetings and for their meals and lodging in accordance with the state travel procedures and regulations.

#### SECTION 13.

71-3-512. Five-year olds attending day care institutions lacking kindergarten status.

(a) A family child care home, group child care home, child care center or prescribed child care center which lacks approved kindergarten status for purposes of § 49-6-201 shall not enroll or continue to enroll any child five (5) years of age during the period of the local education agency's regular school year, without first obtaining from the child's parents or legal guardians a signed acknowledgment of the fact that the child's attendance at the family child care home, group child care home, child care center or prescribed child care center does not satisfy the mandatory kindergarten prerequisite for the child's enrollment in the first grade.

(b) Any such signed acknowledgment shall be retained by the family child care home, group child care home, child care center or prescribed child care center for a period of two (2) years. Failure to comply with the requirements of this section may subject the family child care home, group child care home, or child care center to probation, denial or revocation of the child care agency license, or to civil penalty, by the department.

SECTION 14. Tennessee Code Annotated, Section 71-1-105, is amended by deleting subsection (5) in its entirety and by substituting instead the following new subsection (5):

(5)(A) License or approve, and supervise, adult day care centers and child care agencies as defined in chapter 2, part 4 and chapter 3, part 5 of this title, and to promulgate any regulations it deems necessary to carry out the provisions of the licensing laws.



(B) Establish criteria for the approval of persons or entities who receive any state or federal funds for the provision of care for adults or children whether those persons or entities are licensed or approved as provided in chapter 2 part 4 or chapter 3, part 5 of this title or whether they are otherwise unlicensed, and, if determined by the department to be necessary, provide for such criteria in regulations promulgated pursuant to title 4, chapter 5, part 2; and

(C) Utilize any state, federal, local or private funding to provide for any child care or adult day care services or training which it deems necessary to promote the welfare of children and adults or which are required or permitted by state or federal law or regulations, and to provide such services or training directly or by contract with any public or private entities;

SECTION 15. Tennessee Code Annotated, Section 38-6-109, is amended by deleting the Section in its entirety and by substituting instead the following language:

38-6-109. Verification of criminal violation information.

(a)(1) The Tennessee bureau of investigation shall process requests for criminal background checks from any authorized persons, organizations or entities permitted by law to seek criminal history background checks on certain persons pursuant to such format and under such procedures as it may require.

(b)(1) At the request of any persons, organizations or entities authorized by law to make such requests, the Tennessee bureau of investigation, shall receive fingerprint samples from the persons, organizations or entities permitted by law to make such request and shall check such prints against its records by using its computer files of criminal offenders contained in the Tennessee Crime Information Center (T.C.I.C.) to process these requests and, to the extent permitted by federal law, shall also check such prints against records maintained by the federal bureau of investigation to determine if prior criminal history or convictions exist.

(2) Upon completion of the search, the bureau shall report its findings to the requesting persons, organizations or entities authorized by law to receive such information.

(c)(1) Agencies or organizations which have an agreement to do so with the Tennessee bureau of investigation and which have any responsibility or authority under law for conducting criminal history background reviews of persons, may also access directly the computer files of the Tennessee bureau of investigation (T.C.I.C.) using only names or other identifying data elements to obtain available Tennessee criminal history background information for purpose of such background reviews.

(2) If review by the method permitted by this subsection indicates the need for further verification of the individual's criminal history, and if authorized by the requesting entity's legal authority, the requesting entity may submit fingerprint samples for a criminal history background check by the Tennessee bureau of investigation as otherwise authorized by this section.

(d) The fees for fingerprint searches, other than background checks for volunteers, shall be twenty-four dollars (\$24) for a Tennessee search and an additional twenty-four dollars (\$24) fee for conducting a Federal bureau of investigation search. The fees for volunteers shall be eighteen dollars (\$18) for a Tennessee search and an additional eighteen dollar (\$18) fee for conducting a Federal bureau of investigation search.

SECTION 16. Tennessee Code Annotated, Section 38-6-114, is repealed.

SECTION 17. Tennessee Code Annotated, Section 37-1-408, is repealed.

SECTION 18. Tennessee Code Annotated, Title 37, Chapter 5, is amended by adding Sections 19 through 37 as a new part 5.

SECTION 19.

37-5-501. Definitions.

(a) As used in this part, unless the context otherwise requires: "child care agency" includes "child abuse agency", "child-caring institution", "child-placing agency", "detention center", "family

boarding home or foster home”, “group care home”, “maternity home”, or “temporary holding resource” as defined in subsection (b).

(b) As used in this part, unless otherwise excluded pursuant to § 37-5-503, and unless the context otherwise requires:

(1) "Care giver(s) or care provider(s)" mean the person(s) or entity(ies) responsible for providing for the supervision, protection and basic needs of the child;

(2) "Child or children" means a person or persons under the age of eighteen (18);

(3)(A) "Child abuse agency" means and includes any place, facility or service operated by any entity or person, which undertakes to or does provide any services of any nature whatsoever, including, but not limited to, emergency shelter care, homemaker services, or parent training services, designed to prevent or treat child abuse or neglect or to protect children from child abuse or neglect. "Child abuse agency" does not include any entity or a person licensed by the state of Tennessee to practice medicine or psychology while in the course of such practice; nor any school, hospital, mental health center, or similar institution operated or approved by any agency or department of the state; nor any church or church-related organization;

(B) Nothing in subdivision (1)(A) shall be construed, however, to diminish or repeal the duty of any person to report suspected child abuse pursuant to title 37, chapter 1, parts 4 and 6; and

(C) The provisions of this subdivision (1) do not constitute an appropriation of funds, and, commencing with the fiscal year beginning July 1, 2000, no funds shall be expended under the provisions of this subdivision unless such funds are specifically appropriated in the general appropriations act pursuant to §§ 9-6-101 – 9-6-114, or a specific amendment or supplement thereto;

(4) “Child care” means, for purposes of this part, the provision of supervision, protection and the basic needs of a child for twenty-four (24) hours a day including the provision of

such temporary services to a child awaiting placement in permanent care. Care for a child of less than twenty-four (24) hours duration is licensed by the department of human services pursuant to title 71, chapter 3, part 5;

(5) "Child care agency" or "agency" means, for purposes of this part, and only where the context requires, the person or entity which provides child care, regardless of whether such person or entity is licensed.

(6) "Child-caring institution" means any place or facility operated by any entity or person providing residential child care for thirteen (13) or more children who are not related to the primary care givers;

(7) "Child-placing agency" means any entity or person which places children in foster boarding homes or foster homes for temporary care or for adoption or any other entity or person or group of persons who are engaged in providing adoption studies or foster care studies or placement services as defined by the rules of the department;

(8) "Commissioner" means the chief administrative officer in charge of the department of children's services.

(9) "Department" means: the department of children's services.

(10) "Detention center" means a place or facility operated by any entity or person, governmental or otherwise, for the confinement in a hardware secure facility of a child or children who meet the criteria of § 37-1-114(c) or other applicable laws and who:

(A) Are in need of legal temporary placement;

(B) Are awaiting adjudication of a pending petition; or

(C) Are awaiting disposition and/or placement.

(11) "Family boarding home or foster home" means a home (occupied residence) operated by any entity or person which provides residential child care to at least one (1) child but not more than six (6) children who are not related to the primary care givers.

(12) "Foster child or children" means the person or persons who are living in a child care or residential child care facility as a result of the removal by a court of custody from the child's parent(s) to the department of children's services, by a surrender of parental or guardian rights executed by the child's parent(s) or guardian, or as the result of the execution of any legal document transferring legal custody from the parent(s) or guardian of the child to the department, or to the entity or person operating a child care agency.

(13) "Group care home" means any place or facility operated by any entity or person which provides residential child care for at least seven (7) children but not more than twelve (12) children who are not related to the primary care givers.

(14) "Maternity home" means any place or facility operated by any entity or person which receives, treats or cares for more than one (1) child or adult who is pregnant out of wedlock, either before, during or within two (2) weeks after childbirth; provided, that the licensed child-placing agencies and licensed maternity homes may use a family boarding home approved and supervised by the agency or home, as a part of their work, for as many as three (3) children or adults who are pregnant out of wedlock; and provided further, that the provisions of this definition shall not include children or women who receive maternity care in the home of a person to whom they are kin within the sixth degree of kindred computed according to civil law, nor does it apply to any maternity care provided by general or special hospitals licensed according to law and in which maternity treatment and care is part of the medical services performed and the care of children is brief and incidental.

(15) "Related" means for purposes of "child care": the children, step-children, grandchildren, step-grandchildren, siblings of the whole or half-blood, step-siblings, nieces, nephews or foster children of the primary care giver. For purposes of "residential child care" it means: children, step-children, grandchildren, step-grandchildren, siblings of the whole or half- blood, step-siblings, nieces or nephews of the primary care provider.

(16) "Residential child care" means the provision of supervision, and/or protection, and meeting the basic needs of a child for twenty-four (24) hours per day.

(17) "Temporary holding resource" means a place or facility housing primarily no more than eight (8) children operated by any entity or person, governmental or otherwise, providing a short-term (less than seventy-two (72) hours, exclusive of non-judicial days) placement alternative for a child or children in a primarily staff secure facility, as defined by the department, while the child or children await adjudication of a pending petition or disposition following adjudication, or pending return to a dispositional placement. This facility shall have a maximum of two (2) hardware secure rooms. At least half of the rooms in the facility shall be non-hardware secure.

#### SECTION 20.

37-5-502. Basis for licensing; regulations; license application; temporary license; non-transferability of license; transfer of operation to circumvent licensing laws or regulations; fees.

(a)(1) All persons or entities operating a child abuse agency, child-caring institution, child-placing agency, detention center, family boarding home or foster home, group care home, maternity home, or temporary holding resource, as defined in § 37-5-501, must be licensed by the department of children's services as provided by this part.

(2)(A) The department of children's services shall have authority to issue regulations pursuant to the provisions of title 4, chapter 5, part 2 for the licensing of any persons or entities subject to any provisions of this part and the enforcement of appropriate standards for the health, safety and welfare of children under the care or supervision of those entities.

(B) To the extent they are not inconsistent with the statutory provisions of this part, the regulations of the department of children's services which are in effect upon the effective date of this act shall remain in force and effect until modified by regulatory action of the department.

(3) The department of children's services' regulations of child care agencies shall be developed, and the continued approval of the licensing of a child care agency, shall be based upon the following criteria:

(A) The safety, welfare and best interests of the children in the care of the agency;

(B) The capability, training and character of the persons providing or supervising the care to the children;

(C) The quality of the methods of care and instruction provided for the children;

(D) The suitability of the facilities provided for the care of the children; and

(E) The adequacy of the methods of administration and the management of the child care agency, the agency's personnel policies, and the financing of the agency; and

(F) The present need for the child care agency.

(b)(1) The department shall provide reasonable assistance to applicants or licensees in meeting the child care standards of the department unless the circumstances demonstrate that further assistance is not compatible with the continued safety, health or welfare of the children in the agency's care and that regulatory action affecting the agency's license is warranted. All costs and expenses arising from or related to meeting the child care standards of the department shall be borne entirely by the applicant or licensee.

(2) If a licensee is denied the renewal of license, or if a license is revoked, or if any applicant for a license cannot meet the standards, then the department shall assist in planning for the placement of such children in licensed child care agencies, or other suitable care, return them to their own homes or make any other plans as seem necessary and advisable to meet the particular needs of the children involved.

(c) Application for a license to operate a child care agency shall be made in writing to the department in such manner as the department determines and shall be accompanied by the appropriate fee set forth in the fee schedule in subsection (f).

(d)(1)(A) If the department determines that the applicant, which is not the renewal of an existing license, has presented satisfactory evidence that the facility which is proposed for the care of children has received fire safety and environmental safety approval, that the applicant and the personnel who will care for the children are capable in all substantial respects to care for the children and that the applicant has the ability and intent to comply with the licensing law and regulations, the department shall issue a temporary license to the applicant.

(B) If the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted license which limits the agency's authority in one or more areas of operation.

(2) The purpose of the temporary license is to permit the license applicant to demonstrate to the department that it has complied with all licensing laws and regulations applicable to its classification prior to the issuance of an initial annual license.

(3) Within ninety (90) days of the issuance of the temporary license, the department shall determine if the applicant has complied with all regulations governing the classification of child care agency for which the application was made.

(4)(A) If the department determines that the applicant has complied with all licensing regulations for the classification of child care agency for which application was made, the department shall issue an annual license.

(B) If the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted license which limits the agency's authority in one or more areas of operation.

(5) In granting any license, the department may limit the total number of children who may be enrolled in the agency regardless of whether the agency may have the physical capacity to care for more children.



(6) The licensee shall post the license in a clearly visible location as determined by the department so that persons visiting the agency can readily view the license.

(7) If the department fails to issue or deny an annual license within ninety (90) days of the granting of the temporary license, the temporary license shall remain in effect, unless suspended, as provided in § 37-5-514 until such determination is made. If an annual license is denied following the issuance of a temporary license, and if a timely appeal is made of the denial of the annual license, the temporary license shall remain in effect, unless suspended, until the board of review renders a decision regarding the denial of the annual license.

(8) If a temporary or annual license is denied, or an annual license is restricted the applicant may appeal the denial or restriction as provided in § 37-5-514.

(e)(1) No license for a child care agency shall be transferable and the transfer by sale or lease or in any other manner of the operation of the agency to any other person or entity shall void the existing license immediately and any pending appeal involving the status of the license, and the agency shall be required to close immediately. If the transferee has made application for, and is granted, a temporary license, the agency may continue operation under the direction of the new licensee. The new licensee in such circumstances may not be the transferor or any person or entity acting on behalf of the transferor.

(2) If, however, the department determines that any person or entity has transferred nominal control of an agency to any persons or entities who are determined by the department to be acting on behalf of the purported transferor in order to circumvent a history of violations of the licensing law or regulations or to otherwise attempt to circumvent the licensing law or regulations or any prior licensing actions instituted by the department, the department may deny the issuance of any license to the applicant. The denial of the license may be appealed as provided in § 37-5-514.

(f) The following fees shall apply to applications for licenses for child care agencies licensed pursuant to this part:

- (1) Family boarding home or foster care home.....\$25.00
- (2) Group care home .....\$25.00
- (3) Any child-caring institution or child-placing agency .....\$25.00
- (4) Maternity home.....\$25.00
- (7) Child abuse agency .....\$25.00
- (8) Detention center .....\$25.00
- (9) Temporary holding resources .....\$25.00

(g) All licensure application and renewal fees collected by the department pursuant to this part shall be paid into the general fund, but shall be earmarked for and dedicated to the department of children's services. Such earmarked fees shall be used by the department exclusively to improve child care quality in this state.

(h) A license issued to a child-placing agency by the department of children's services shall include all boarding homes, group care homes or foster homes approved, supervised and used by the licensed agency as a part of its work.

(i) Notwithstanding any provisions of title 13, chapter 7, to the contrary, upon adoption of a resolution by a two-thirds (2/3) vote of the county legislative body, any zoning authority, in determining the suitability of a request for any use of property for the establishment or alteration of any child care agency, may consider the criminal background of the person or persons making a request to such board or may consider the criminal background of any person or persons who will manage or operate such child care agency. The board may require the person to submit a fingerprint sample and a criminal history disclosure form and may submit the fingerprint sample for comparison by the Tennessee bureau of investigation pursuant to § 38-6-109, or it may conduct the background check by other means as it deems appropriate. The

zoning authority shall be responsible for all costs associated with obtaining such criminal background information.

## SECTION 21.

37-5-503. Program and facilities exempt from licensing.

The following entities, facilities or programs are excluded from licensing or approval as child care agencies pursuant to this part:

- (a) All child care regulated by the departments of education or human services;
- (b) Public or private summer day camps or overnight camps such as those operated by the Boy or Girl Scouts, the YMCA or YWCA, by church or religious organizations or by organizations representing disabled children which operate less than ninety (90) days per year and other similar businesses or programs as determined by the department;
- (c) Entities or persons licensed or otherwise regulated by other agencies of the state or federal governments providing health, psychiatric or psychological care or treatment or mental health care or counseling for children while the entity or person is engaged in such licensed or regulated activity;
- (d) Schools and educational programs and facilities the primary purpose of which is to provide a regular course of study necessary for advancement to a higher educational level or completion of a prescribed course of study, and which may, incident to such educational purpose, provide boarding facilities to the students of such programs; provided, that the Tennessee Preparatory School is not excluded from approval pursuant to this part; and
- (e) Orphanages or other similarly designated homes affiliated with, funded, and operated by a church or religious organization, which homes receive their principal financial support from such church or religious affiliation in counties having a population of not less than twelve thousand three hundred (12,300) nor more than twelve thousand three hundred fifty (12,350) according to the 1970 federal census.

## SECTION 22.

37-5-504. Preexisting agencies subject to chapter.

All child-caring institutions, child-placing agencies and maternity homes chartered in this state prior to the passage of this part shall be subject to all of its requirements.

#### SECTION 23.

37-5-505. Receiving children.

Child-caring institutions, and child-placing agencies, family boarding homes, group care homes or foster homes, when licensed in accordance with the provisions of this part, may receive needy or dependent children from their parents or legal guardians for special, temporary or continued care. The parents or guardians may sign releases or agreements giving to such institutions or agencies custody and control of the persons of such children during the period of such care, which may be extended until the children arrive at legal age or they may surrender such children to a licensed child-placing agency for purposes of adoption, such surrender to be in conformity with the provisions of the law governing the surrender of children for adoption.

#### SECTION 24.

37-5-506. Selection and supervision of foster homes.

(a) Child-placing agencies, in placing children in private families, shall safeguard their welfare by a thorough investigation of each applicant and its home and its environment, carefully select the home in which the child is placed, and personally and adequately supervise each home and child until the child is legally adopted or released.

(b) All children placed in private families shall be, as far as it is practicable, placed with those of the same religious faith as the children themselves, or their parents.

#### SECTION 25.

37-5-507. Unlicensed placement of children for care or adoption

(a) Private individuals, including midwives, physicians, nurses, hospital officials, lawyers and the officials of any nonchartered and/or nonlicensed child-caring institution, child-placing agency, or maternity home, are forbidden to engage in placing children for temporary care or for adoption.

(b) A violation of this section is a Class A misdemeanor.

#### SECTION 26.

37-1-508. Injunctions against unlicensed operations.

(a) The department may, in accordance with the laws of the state of Tennessee governing injunctions, maintain an action in the name of the state of Tennessee to enjoin any person, partnership, association, corporation or other entity from establishing, conducting, managing or operating any place or facility providing services to children without having a license as required by law, or from continuing to operate any such place or facility following suspension of a license or following the effective date of the denial or revocation of a license.

(b) In charging any defendant in a complaint for such injunction, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, conduct, manage or operate a place, home or facility of any kind which is a child care agency as defined in this part or to charge that the defendant is about to do so without having in effect a license as required by law, or that the defendant continues to operate any such place or facility following suspension of a license, or following the effective date of the denial or revocation of a license, without averring any further or more particular facts concerning the case. Refusal to obey the inspection order may be punished as contempt.

#### SECTION 27.

37-5-509. Criminal violations.

(a) Any person or entity, as defined in § 37-5-501, operating a child care agency without being licensed by the department or who continues to operate while a suspension of the license

is in effect, or who operates a child care agency following the effective date of a denial or revocation of a license, commits a Class A misdemeanor.

(b) Each day of operation without an effective license constitutes a separate offense.

#### SECTION 28.

##### 37-5-510. Public agencies - Inspection and report.

(a) Any child care agency, as defined in § 37-5-501, which is under the direct management of an administrative department of the state, a county, or a municipality, or any combination of these three (3), shall not be subject to license, but shall meet the minimum standards for programs and care as required of such child care agencies.

(b)(1) The commissioner, through the commissioner's authorized representative, shall make periodic inspections of such publicly administered child care agencies.

(2) The report of such inspections and recommendations shall be made in writing to the executive head of the publicly administered child care agency the board of directors, if any, and/or the division of the state, county or municipal government which has the duty under the law to operate such agency.

(c) It is the duty of the department to cooperate with the publicly administered agencies herein referred to, to implement recommended changes in program and policies.

(d) If, within a reasonable time, such standards and recommendations are not met, it shall be the duty of the commissioner to make public in the community in which this agency is located, the report of the above-mentioned inspection.

(e)(1) If violations of the standards for child care agencies are found and are not corrected within a reasonable time, or, if serious violations are found which meet the requirements which would justify the suspension of a child care agency's license pursuant to § 4-5-320, the department may file a complaint in the chancery court of the county in which the child care agency is located.

(2) The chancery court shall have jurisdiction to hear the complaint and to enter any orders or injunctive relief necessary to ensure the correction of such violations or to suspend the operations of the facility for the protection of the children who are in the care of the child care agency.

#### SECTION 29.

37-5-511. Criminal violation information required of persons having access to children; Review of vulnerable persons registry; Verification; Exclusion from access to children.

(a)(1) Each person:

(A) applying to work with children as a paid employee with a child care agency as defined in § 37-5-501, or with the department in any position in which any significant contact with children is likely in the course of the person's employment; or

(B) a new volunteer who is expected to provide volunteer services in excess of twenty (20) hours per month in a child care agency, or with the department, in any position in which any significant contact with children is likely in the course of the person's volunteer, shall complete a criminal history disclosure form in a manner approved by the department, and shall agree to release all records involving the person relating criminal history of such person to the child care agency and to the department of children's services for the purpose of verifying the accuracy of criminal violation information contained on the disclosure form required by this section.

(2) Such persons shall also shall submit to a criminal history records check to be conducted by the Tennessee bureau of investigation and shall submit to a review of such person's status on the department of health's vulnerable persons registry under title 68, chapter 11, part 10;

(3) The disclosure forms shall include at a minimum the following information:

(A) The social security number of the applicant or volunteer;

(B) The complete name of the applicant or volunteer;

(C) Disclosure of information relative to any violations of the law, including pending criminal charges of any kind, and any conviction involving a sentence or suspended or reduced sentence and a release of all records involving the person's criminal background history; and

(D) A space for the applicant or volunteer to state any circumstances which should be considered in determining whether to allow the person to be employed or to remain as a resident in the agency or to provide volunteer services.

(4) The form shall notify the applicant or volunteer that falsification of required information may subject the person to criminal prosecution, and that the person's employment or volunteer status with the agency or the department is conditional pending a criminal records history review regarding the person's criminal history status.

(5) A copy of the disclosure form shall be maintained in the child care agency's records for review by the department, and the department shall maintain a copy of the disclosure form in the records of the applicant for employment or volunteer services with the department.

(b)(1) The disclosure form shall be sent to the department by the child care agency and, pursuant to § 38-6-109, the department may directly access the computer files of the Tennessee bureau of investigation (T.C.I.C.) using only names or other identifying data elements contained in the disclosure form or such other information as may be available to the department to obtain available Tennessee criminal history background information for the purpose of criminal background reviews.

(2) If information obtained by this method indicates that there exists or may exist a criminal record on the individual, the department may further review the criminal record history with the individual and the entity with whom the individual is associated to obtain further verification, and the department may request fingerprint samples from the individual and submit the fingerprints for a complete Tennessee and federal criminal history



background review pursuant to § 38-6-109. The department shall pay the costs of such fingerprint background checks pursuant to provisions of §§ 38-6-103 and 38-6-109.

(3) Pending the outcome of the background check, the applicant for employment or for a volunteer services position shall be conditional with the agency or with the department, and shall be dependent upon the outcome of the background check.

(4) The results of the inquiry to the Tennessee bureau of investigation shall be recorded in the applicant's or volunteer's records.

(5) If the information on the form appears to have been falsified, the Tennessee bureau of investigation shall report such finding to the department. The department shall notify in writing the appropriate district attorney general of such falsification.

(c) The agency, and the department for its employees, shall utilize the information on the form to conduct an inquiry of the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10 for a review of the person's status on such registry. The results of the inquiry to the registry shall be maintained in the applicant's or volunteer's records.

(d)(1) Conviction of an offense, or a lesser included offense, involving the physical, sexual or emotional abuse or gross neglect of a child or which constitutes conviction of an offense involving violence against a child, or any person, or conviction of an offense involving the manufacture, sale possession or distribution of any drug, or a no contest plea to such offenses, and any pending warrants, indictments or presentments for such offenses, or the identification of the individual on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, shall disqualify the individual from employment with, or from providing any volunteer services to children in, or from having any access whatsoever to children as a resident of, a child care agency as defined by this part, or with the department.

(2) Any offense and any pending warrants, indictments or presentments involving driving under the influence of an intoxicant during which a child was in the vehicle of the person on whom the criminal background check was obtained, or any felony offense, and any pending

warrants, indictments or presentments for any felony offense, involving such person in which the person caused, allowed or permitted a child to be present, shall disqualify the person from providing care or transportation for any child in the child care agency.

(3) The child care agency, and the department for its employees, shall immediately exclude an individual from employment or volunteer services with children, if the results of the criminal background check or review of the vulnerable person's registry demonstrate to the agency, or upon review by the department demonstrate, that the criminal history of such individual is within the prohibited categories established in subdivision (1). If an exemption from the exclusion is provided for by rule of the department pursuant to subsection (e), such person shall remain excluded until it is determined by the department whether there is a basis for an exception from the exclusion.

(4) The failure of a child care agency to exclude a person with a prohibited criminal history from employment with, or from the provision of volunteer services, or the failure, as determined by the department, to adequately restrict the access to children of a resident at a child care agency, shall subject the child care agency to immediate suspension of the agency's license by the department.

(5) Any person who is excluded based upon the results of the criminal history background review may appeal the exclusion to the department within ten (10) days of the mailing date of the notice of such exclusion to the subject person.

(6) If timely appealed, the department shall provide an administrative hearing pursuant to title 4, chapter 5, part 3 in which the appellant may challenge the accuracy of the report, and may challenge the failure to grant an exception to the exclusion required by this subsection if a rule for such purpose is promulgated by the department pursuant to subsection (e).

(7) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to

show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal charge except to show that such charge was or, since the report was generated, has been, dismissed, nolle or has resulted in an acquittal.

(e) The department may by rule promulgate standards of review for the purpose of considering exemptions from the criminal background exclusion established by this section.

(f) It is unlawful for any person to falsify any information required on the disclosure form required by this section. A person who knowingly fails to disclose on the disclosure form required information or who knowingly discloses false information or who knowingly assists another to do so shall be guilty of a Class A misdemeanor.

#### SECTION 30.

37-5-512. Abuse, neglect, or sexual abuse.

(a)(1) Notwithstanding the provisions of § 71-3-503 or § 37-5-503, the department of children's services shall have the authority and responsibility to fully investigate, in accordance with the provisions of title 37, chapter 1, parts 1, 4 and 6, any allegation of abuse, neglect or sexual abuse which it receives regarding any child or children in the care of, or subject to the supervision, instruction or treatment of, any public or private entity or any person, whether or not such entity or person is subject to licensure or approval pursuant to this part or title 71, chapter 3, part 5, or title 49, chapter 1, part 10.

(2) The departments of education and human services shall report all allegations of abuse or neglect in any child care agency or child care program which they may license, approve, or certify immediately to the department of children's services for investigation and shall cooperate with the department of children's services in any investigations of abuse or neglect involving any such agency or program. If the department of children's services receives a report of abuse or neglect in any child care program certified by the department

of education or a child care agency licensed by the department of human services, it shall immediately notify the appropriate department of its investigation.

(3)(A) The departments of children's services, education and human services shall utilize any information obtained in the course of such investigations in the determination of whether appropriate care is being provided to children which may be in the care of any child care agency or child care program which the departments of children's services, education or human services license, approve or certify.

(B) For purposes related to that determination and any appropriate licensing or approval action, the departments of education and human services shall be permitted access to the department of children's services' records; provided, however, that any information contained in any record of the department of education's or human services' or records relating to the investigation of the report of harm by the department of children's services shall be confidential and shall be released:

(i) Only in the proceedings concerning any certification, licensing or approval action or injunctive action by the departments of education or human services permitted by title 49, chapter 1, part 10 or title 71, chapter 3, part 5; or

(ii) As otherwise permitted by the restrictions and conditions for the release of confidential records of the department of children's services pursuant to title 4 and title 37, chapter 1, part 4 or 6; or

(iii) As otherwise permitted by the department of children's services' regulations concerning procedures for release of information of validated perpetrators of child abuse. For purposes of this subdivision (B)(iii), the rules of the department of children's services concerning release procedures for due process purposes shall apply to the release procedures of the departments of education and human services regarding perpetrators of child abuse validated by the department of children's services. Nothing herein shall be construed to permit the release of the name or

identifying information of any person reporting child abuse or neglect under title 37, chapter 1, parts 4 or 6.

(3) In the conduct of such investigations involving the alleged abuse or neglect of any child or in the evaluation of the appropriateness of any child care program or child care agency or the appropriateness of the care provided by any person, the departments of children's services, education and human services shall be granted access to the records of children in the care of the person or entity and to all personnel files of the director and employees of the person or entity and to all records of the person or entity. They shall be allowed to inspect all the premises in which children are kept or cared for and shall be allowed to interview any and all children in the care of such person or entity if the departments of children's services, education or human services determine that it is necessary to do so.

(b) If admission to the places, facilities or homes of the entities or persons involved in the care, supervision, instruction or treatment of the child is denied or delayed for any reason, the chancery, circuit or juvenile court of the county where the entity or person is located shall, upon cause shown by the department of children's services in investigations of abuse or neglect or sexual abuse involving any person or entity or in any of its licensing or approval activities, or upon cause shown by the departments of education or human services in any certification, licensing or approval activities, immediately, by ex parte order, direct the persons in charge of such places, facilities or any persons having responsibility for the care, supervision, instruction or treatment, of the child or children to allow entrance for the review of records, inspection of the premises, and to permit any interviews with or examinations of the children as permitted pursuant to title 37, chapter 1, this part, title 49, chapter 1, part 10, or title 71, chapter 3, part 5.

(c)(1) If the departments of children's services, education or human services determine at any time that any person employed or associated in any manner with any person or entity, or any person providing care, supervision, instruction or treatment, of children has, at any time,

abused, neglected or sexually abused a child, the department with certification, licensing or approval authority may take certificate or licensing action to prevent any child care program or child care agency certified, licensed or approved by it from continuing to provide care for children if such program or agency fails or refuses to take appropriate or timely action to prevent future abuse, neglect or sexual abuse by that person.

(2) If the entity or person is subject to certification by the by the department of education pursuant to title 49, chapter 1, part 10 or is subject to licensure or approval by department of human services pursuant to title 71, chapter 3, part 5, those departments may, in addition to any certificate. licensing or approval action, bring an action in the chancery, circuit or juvenile court of the county where the abuse, neglect or sexual abuse occurred or where the person resides to enjoin the entity found to have failed to protect the child or children from abuse, neglect or sexual abuse or the person who, at anytime, abused, neglected or sexually abused a child or children, from continuing currently, or in the future, to provide care, supervision, instruction or treatment for children on a full or part-time basis, or to enjoin the person who perpetrated the abuse or neglect from being associated in any manner with any entities or persons providing care, supervision, instruction or treatment for children.

(3) If the department of children's services determines at any time that any person employed or associated in any manner with an entity or person, or any person individually, providing care, supervision, instruction or treatment of children, has at any time abused, neglected or sexually abused a child, the department of children's services may bring an action for injunctive relief as permitted by subdivision (2), whether or not the entity or person is subject to certification, licensure or approval by the departments of children's services, education or human services.

(4) In order to facilitate the protection of children, the departments of children's services, education and human services are specifically authorized to enter into inter-agency

agreements for cooperative arrangements in any investigations or litigation authorized by this part.

#### SECTION 31.

37-5-513. Inspection of persons or entities providing child care.

(a) It is the duty of the department, through its duly authorized agents, to inspect at regular intervals, without previous notice, all child care agencies or suspected child care agencies, as defined in § 37-5-501.

(b)(1) The department is given the right of entrance, privilege of inspection, access to accounts, records, and information regarding the whereabouts of children under care for the purpose of determining the kind and quality of the care provided to the children and to obtain a proper basis for its decisions and recommendations.

(2) If refused entrance for inspection of a licensed, approved or suspected child care agency, the chancery or circuit court of the county where the licensed, approved or suspected child care agency may be located may issue an immediate ex parte order permitting the department's inspection upon a showing of probable cause, and the court may direct any law enforcement officer to aid the department in executing such order and inspection. Refusal by the child care agency to obey the inspection order may be punished as contempt.

(c) Any violation of the rights given in this section is a Class A misdemeanor.

#### SECTION 32.

37-5-514. Violations of licensing regulations; probation; suspension, denial and revocation of licenses; appeal procedures.

(a) If any complaint is made to the department concerning any alleged violation of the laws or regulations governing a child care agency, the department shall investigate such complaint and shall take such action as it deems necessary to protect the children in the care of such agency.

(b)(1) If, during the licensing period, the department determines that a child care agency is not in compliance with the laws or regulations governing its operation, and if after reasonable written notice to the agency of the violation, the department determines that the violation remains uncorrected, the department may place the licensed or approved agency on probation for a definite period as determined by the department, and the department shall require the posting by the agency of the notice of probation. The department shall provide the agency a written basis describing the violation of the licensing rules that support the basis for the probationary status.

(2)(A) If placed on probation, the agency shall immediately post a copy of the probation notice, together with a list provided by the department of the violations which were the basis for the probation, in a conspicuous place as directed by the department and with the agency's license, and the agency shall immediately notify in writing the custodians of each of the children in its care of the agency's status, the basis for the probation and of its right to an informal review of the probationary status.

(B) If the agency requests within two (2) business days of the imposition of probation, either verbally or in writing to the department's licensing staff which imposed the probation, the department shall informally review the probationary status by a department licensing staff person or other designee who was not involved in the decision to impose the probation. The agency may submit any written or oral statements as argument to such staff person or other designee within five (5) business days of the imposition of the probation. Written and oral statements may be received by any available electronic means. The licensing staff person or other designee shall render a decision in writing upholding, lifting or modifying the probationary status within seven (7) business days of the imposition of the probation. The decision of the departmental licensing staff person or other designee shall be final.



(3) If the probationary period imposed exceeds thirty (30) business days, and if the licensing staff person or designee did not overturn the probation under subdivision (B), the agency may also appeal such action in writing to the commissioner within five (5) business days of the receipt of the notice of the agency's probationary status. If timely appealed, the department shall conduct an administrative hearing pursuant to the contested case provisions of §§ 4-5-301 et seq. concerning the department's action within fifteen (15) business days of receipt of the appeal and shall render a decision in writing within seven (7) business days following conclusion of the hearing. The hearing officer may uphold, modify or lift the probation.

(4)(A) If the agency has appealed the probationary status as established by subdivisions (2) or (3), and if the agency requests further review of its continued or modified probationary status, the department shall review the agency's status, and may terminate or modify a probationary period if it determines that the purpose of the probationary period has been served and if the violations for which the probation was imposed have been satisfactorily corrected.

(B) If the department determines that the violations which were the basis for the probationary have remained uncorrected, and the remaining probationary period exceeds thirty (30) business days, the department shall notify the licensee, and the licensee may further appeal such determination as provided in subdivision (3).

(5) The provisions of this subsection shall be discretionary with the department, and shall not be a prerequisite to any licensing action or to suspend, deny or revoke a license of a child care agency.

(c)(1) If the department determines that any applicant for a temporary license or for the renewal of an existing license has failed to attain or maintain compliance with licensing laws or regulations after reasonable notice of such failure and a reasonable opportunity to demonstrate compliance with licensing law or regulations, it may deny the application for the new or renewed

license; provided, however, the department at any time may deny a temporary license if the applicant fails to meet the initial requirements for its issuance; and, provided, further, if the department determines that repeated or serious violations of licensing law or regulations warrant the denial of the license, then, notwithstanding any provisions of § 4-5-320 or this subsection to the contrary, the department may seek denial of the license regardless of the licensee's demonstration of compliance either before or after the notice of denial of the application.

(2) Notwithstanding the provisions of § 4-5-320, the notice of denial may be served personally by an authorized representative of the department who shall verify service of the notice by affidavit, or the notice may be served by certified mail, return receipt requested.

(3) If the temporary or annual, or license is denied, the applicant may appeal the denial by requesting in writing to the department a hearing before the child care board of review within ten (10) days of the personal delivery or mailing date of the notice of denial. Failure to timely appeal shall result in the expiration of any existing license immediately upon the expiration of the time for appeal.

(4) The hearing upon the denial shall be heard by the board of review within thirty (30) days of the date of service of the notice of denial; provided, however, for good cause as stated in an order entered on the record, the board or the administrative law judge or hearing officer may continue the hearing; provided, however, in no event, however, shall the hearing be continued unless the board, administrative law judge or hearing officer makes a finding on the record that the children in the care of the child care agency are in no immediate danger from the agency's continued operation. A hearing may also be continued pursuant to the circumstances of subsection (h).

(5)(A) If timely appeal is made, pending the hearing upon the denial, the child care agency may continue to operate pending the decision of the board of review unless the license is summarily suspended as provided in subsection (e).

(B) The board, as part of its decision regarding the status of the applicant's license, may direct that the child care agency be allowed to operate on a probationary or conditional status, or may grant the license with any restrictions or conditions on the agency's authority to provide care.

(d)(1) If the department determines that any existing licensee has failed to maintain compliance with licensing laws or regulations after reasonable notice of such failure and a reasonable opportunity to demonstrate compliance with the licensing regulations, the department may revoke the license; provided, however, if the department determines that repeated or serious violations of licensing regulations warrant the revocation of the license, then, notwithstanding any provisions of § 4-5-320 or this subsection to the contrary, the department may seek revocation of the license regardless of the licensee's demonstration of compliance either before or after the notice of revocation.

(2) Notwithstanding the provisions of § 4-5-320, the notice of revocation may be delivered personally by an authorized representative of the department who shall verify service of the notice by affidavit or the notice may be delivered by certified mail, return receipt requested.

(3) If the license is revoked, the licensee may appeal the revocation by requesting in writing to the department a hearing before the child care board of review within ten (10) days of the personal delivery or mailing date of the notice of revocation. Failure to timely appeal shall result in the expiration of any existing license immediately upon expiration of the time for appeal.

(4) The hearing upon the revocation shall be heard by the board of review within thirty (30) days of the date of service of the notice of revocation; provided, however, for good cause as stated in an order entered on the record, the board or the administrative law judge or hearing officer may continue the hearing; provided, however, in no event, however, shall the hearing be continued unless the board, administrative law judge or hearing officer makes a finding on the record that the children in the care of the child care agency are in

no immediate danger from the agency's continued operation. A hearing may also be continued pursuant to the circumstances of subsection (h).

(5)(A) If timely appeal is made, pending the hearing upon the revocation, the child care agency may continue to operate pending the decision of the board of review unless the license is summarily suspended as provided in subsection (e).

(B) The board, as part of its decision regarding the status of the applicant's license, may direct that the child care agency be allowed to operate on a probationary or conditional status, or may allow the license to remain in effect with any restrictions or conditions on the agency's authority to provide care.

(e)(1) If the department determines at anytime that the health, safety or welfare of the children in care of the child care agency imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of the license may be ordered by the department pending any further proceedings for revocation, denial or other action. If the department determines that revocation or denial of the license is warranted following suspension, those proceedings shall be promptly instituted and determined as authorized by this part.

(2) In issuing an order of summary suspension of a license the department shall use the following procedures:

(A) The department shall proceed with the summary suspension and notify the licensee of the opportunity for an informal hearing before the department within seven (7) business days of the issuance of the order of summary suspension.

(B) The notice provided to the licensee may be provided by any reasonable means and shall inform the licensee of the reasons for the action or intended action of the agency and of the opportunity for an informal hearing before the department.

(C) The informal hearing described by this subdivision shall not be required to be held under the contested case provisions of § 4-5-301 et seq. The hearing is intended to

provide an informal, reasonable opportunity for the licensee to present to the department the licensee's version of the circumstances leading to the suspension order. The sole issue to be considered is whether the public health, safety or welfare imperatively required emergency action by the department.

(D) Subsequent to the hearing on the summary suspension, the department may proceed with revocation or denial of the license or other action as authorized by this part, regardless of the decision concerning summary suspension of the license.

(f)(1) In determining whether to deny, revoke or suspend a license, the department may choose to deny, revoke or suspend only certain authority of the licensee to operate and may permit the licensee to continue operation, but may restrict or modify the licensee's authority to provide certain services or perform certain functions, including, but not limited to: transportation or food service, enrollment of children at the agency, the agency's hours of operation, the agency's use of certain parts of the agency's physical facilities or any other function of the child care agency which the department determines should be restricted or modified to protect the health, safety or welfare of the children.

(2) The actions authorized by this subsection may be appealed as otherwise provided in this part for any denial or revocation.

(g)(1) When an application for a license has been denied or a license has been revoked, on one (1) occasion, the child care agency may not reapply for a license for a period of one (1) year from the effective date of the denial or revocation order if not appealed, or, if appealed, from the effective date of the board's or reviewing court's order.

(2) If application for a license has been denied, or a license has been revoked, on two (2) occasions, the child care agency may not reapply for a license for a period of two (2) years from the effective date of the denial or revocation if not appealed or, if appealed, from the effective date of the board's or reviewing court's decision.

(3) If an application for a license has been denied, or a license has been revoked on three (3) occasions, the agency shall not receive another license for the care of children.

(4) No person who served as full or part owner or as director or as a member of the management of a child care agency shall receive a license to operate a child care center if that person participated in such capacity in a child care agency which has been denied a license or had a license revoked on three (3) occasions

(5)(A) The time restrictions of subdivisions (1) and (2) may be waived by the board of review in the hearing in which the denial or revocation is sustained, or, if requested by the former licensee in writing to the commissioner, in a separate subsequent hearing before the board of review or, in the discretion of the commissioner, upon review by the commissioner.

(B) The agency must show to the board's or the commissioner's satisfaction that the agency has corrected the deficiencies which led to the denial or revocation, and that the child care agency can demonstrate that it has the present and future ability, and is willing, to maintain compliance with licensing laws or regulations. The decision of the board or the commissioner shall be reduced to an order, which shall be a final order pursuant to title 4, chapter 5, part 3, and may be appealed pursuant to § 4-5-322.

(C) No waiver may be granted for any permanent restriction which has been imposed pursuant to subdivision (3).

(h)(1) In conducting hearings before the board of review, it is the legislative intent that such hearings be promptly determined consistent with the safety of the children in the care of the child care services involved and with the due process rights of the license applicants or licensees.

(2) If, however, the administrative procedures division of the office of the secretary of state certifies by letter to the recording secretary of the board of review that the division's contested case docket prevents the scheduling of a hearing before the board within the initial timeframes set forth in this part, then the department shall appoint a hearing officer

from the department to conduct the proceedings before the board. The substitute hearing officer shall have all authority as an administrative law judge of the department of state. The hearing may be continued for the purpose of obtaining a substitute hearing officer.

(3) A hearing may also be continued if the of the secretary of state's office certifies pursuant to this subsection that it cannot set a hearing within the time frame set forth in this subdivision.

#### SECTION 33.

37-5-515. Board of review for licensing actions.

Actions by the department of children's services to deny or revoke or to otherwise limit any license, except for the summary suspension of a license, shall be reviewed by the child care agency board of review established pursuant to title 71, chapter 3, part 5.

#### SECTION 34.

37-5-516. Licensing standards committees.

(a)(1) The commissioner of the department shall appoint a standards committee composed of sixteen (16) citizens, four (4) from each grand division of the state, and four (4) at large for the purpose of developing or reviewing standards and regulations for each class of child care agency defined in this part.

(b) For any new class of child care agency as defined in this part, the standards committee shall develop and recommend to the commissioner the standards and regulations for that new class of child care agency. The standards and regulations of each existing class of child care agency shall be reviewed by a standards committee beginning every four (4) years following the date of submission of its last recommendations or more frequently as the commissioner may direct.

(c) The standards committee shall act in an advisory capacity to the commissioner in recommending any initial standards or regulations or any changes to the existing standards or regulations of any class of child care agency.

(d) The committee shall cease to exist upon submitting its recommendations to the commissioner, but may be re-established by the commissioner at anytime to further review its recommendations or to consider additional standards or regulations or to consider revisions to the standards or regulations.

(e) In making appointments to the committee, the commissioner shall strive to ensure that at least one (1) person serving on the committee is sixty (60) years of age or older and that at least one (1) person serving on the committee is a member of a racial minority.

(f) The members of the committee shall not receive any compensation for their services but shall be reimbursed for their travel to and from the committee meetings and for their meals and lodging in accordance with the state travel procedures and regulations.

#### SECTION 35.

##### 37-5-517. Individual plans- Reports.

(a) An agency shall prepare a written plan for each child in foster care and each child placed in its care by voluntary agreement. Such plans shall be prepared at the time a child comes under the supervision of the agency. Such plan shall be subject to review by the department of children's services. Failure to prepare such a plan shall be grounds for revocation of the agency's license.

(b) In its annual report to the department of children's services pursuant to § 37-5-519, the agency shall include the number of children in foster care, the total number of children who have been in care during the year, the number of plans prepared, the number of children adopted, and the average length of the stay of the children.

#### SECTION 36.

##### 37-5-518. Annual reports of child care agencies.

(a) Each child care agency shall make an annual report of its work to the department in such reasonable form as the department shall prescribe.



(b) The department shall prepare and supply to all child care agencies the necessary printed forms to record the requested information.

#### SECTION 37.

##### 37-5-519. Annual report.

The department shall prepare a comprehensive annual report of the status of child care agencies within the state subject to its jurisdiction, accompanied by special comments and recommendations, and such reports shall be published at state expense for the information of the general assembly and for distribution to interested persons.

SECTION 38. Tennessee Code Annotated, Section 49-2-203, is amended by deleting subdivision (b)(11)(B) in its entirety and by re-designating subdivision (11) appropriately.

SECTION 39. Tennessee Code Annotated, Section 49-1-302, is amended by adding the following new subsection:

(k)(1) The board, through the state department of education, shall enforce standards for care of children in any before or after school child care programs operated pursuant to the provisions of § 49-2-203(b)(11); for child care provided by church affiliated schools as defined by § 49-50-801; for public school administered early childhood education programs; and for child care provided in federally regulated programs including Title I preschools, all Head Start and Even Start programs; and state approved Montessori school programs.

(2)(A) The board shall promulgate regulations pursuant to the provisions of title 4, chapter 5, part 2 to establish standards for those programs described in subdivision (1).

(B) The regulations shall provide equivalent protection for the health, safety and welfare of children, and shall use the same criteria for development of such protection as are used by the department of human services and which are set forth in § 71-3-502(a)(3). Although the standards and regulations need not be identical in all respects, the standards and regulations shall parallel, in a substantial manner, the child care

standards and regulations promulgated by the department of human services for child care agencies which that department licenses.

(3) Certificates of approval shall be issued pursuant to those regulations by the commissioner of the department of education, pursuant to § 49-1-1001 et seq. to those child care programs which meet the standards as adopted by the board.

(4)(A) There is established a Child Care Advisory Council which shall advise the state board of education regarding the establishment of child care standards and regulations for child care programs subject to the board's jurisdiction and to act as a hearing tribunal for appeals from actions of the state department of education regarding the certificate of approval issued to child care programs.

(B)(i) The council shall consist of a director of a local school system, a representative of a private, church related school organization as defined in § 49-50-801, a representative from an institution of higher education with expertise in early childhood development, a parent of a child in a child care program, a coordinator of child care programs, a representative of the department of education, a representative from the child care services staff of the department of human services as designated by the state board of education and four (4) other members as may be designated by the board of education. The council shall fairly represent the racial and ethnic composition of the state. Members shall serve until replaced by the board. The representative of the department of education shall serve as chair of the council until the council elects a chair. The chair shall sign the orders of the council regarding certificate actions taken by the council.

(ii) The council shall elect a vice-chair who shall serve in the absence of the chair. If the chair resigns, is unable to perform the duties of the chairperson or is removed or the chair's term on the council expires, the chairman of the state board of education shall appoint a new chair until the board can elect a chair. The vice-chair shall have authority to

sign all orders of the council in the absence of the chair and for actions of the panels under subdivision (E)(iii).

(C) The members of the council shall serve without reimbursement except for their travel expenses as may be established by state travel regulations.

(D) The council shall act as an advisory council to the state board of education regarding the development of child care standards for child care programs subject to the board's jurisdiction and shall review the standards on a formal basis at least every four (4) years, but may be requested by the board to conduct such further reviews as may be necessary more frequently or to otherwise provide periodic advice to the board regarding child care programs subject to the board's jurisdiction.

(E)(i) The council shall act as a hearing tribunal for all actions of the department of education regarding the denial or revocation of a certificate of approval for the operation of a child care program under the jurisdiction of the state board of education; provided, however, the council shall not hear issues regarding the summary suspension of a certificate of approval which shall be heard by a department hearing officer.

(ii) For purposes of acting as a hearing tribunal, a quorum for the hearing shall consist of a majority of the members of the council.

(iii) In order to complete the work of the council, the chair may appoint one or more panels of the council with a quorum of five (5) members, at least one (1) of whom shall be randomly selected at-large members selected by the chair. The chair of the council shall appoint the chair of the panel. The panel shall have complete authority to hear any case under the council's jurisdiction and shall have complete authority to enter any necessary orders concerning certificates actions conducted before the council. Any orders of the panel shall be signed by the chair of the panel, or by the council chair or vice-chair.

(F) Rules for its operation as a hearing tribunal shall be adopted by the state board of

education in accordance with the provisions of title 4, chapter 5, part 2.

(G) An existing member of the professional staff of the department of education shall serve as recording secretary of the council and shall assist in the arrangement of meetings of the council and the setting and processing of appeal hearings regarding certificates of approval for child care programs.

SECTION 40. Tennessee Code Annotated, Title 49, Chapter 1, is amended by adding SECTIONS 41 through 49 as a new part 10.

#### SECTION 41.

49-1-1001. Approval of certain child care programs by commissioner.

(a) The commissioner of education, acting through the commissioner's authorized agents and pursuant to regulations of the state board of education which are adopted pursuant to § 49-1-302(k), shall be responsible for inspecting and approving those child care programs subject to the state board's jurisdiction pursuant to § 49-1-302(k).

(b) The commissioner shall have authority to issue certificates of approval from the department of education for those child care programs which meet the child care standards of the board, and the commissioner shall be responsible for enforcing the board's standards for such programs.

#### SECTION 42.

49-1-1002. Definitions.

(a) "Care giver(s)", or "care provider(s)" mean the person(s) or entity(ies) directly responsible for providing for the supervision, protection and basic needs of the child;

(b) "Child or children" means a person or persons under the age of eighteen (18).

(c) "Child care" means, for purposes of this part, the provision of supervision, protection and, at a minimum, the basic needs of a child or children for three (3) or more hours a day, but less than twenty-four (24) hours a day. Care for a child of twenty-four (24) hours duration is "residential child care", which is licensed by the department of children's services pursuant to

title 37, chapter 5, part 5; the department of human services licenses “child care agencies” providing child care in “child care centers”, “group child care homes”, “family child care homes”, and “prescribed child care centers”, as defined in § 71-3-501;

(d) “Child care program” means any place or facility operated by any person or entity which provides child care for children in a before or after school-based program operated by a local board of education pursuant to § 49-2-203(b)(11), a public school administered early childhood education program, a church affiliated program operated pursuant to § 49-50-801, or a federally funded early childhood education program such as a Title I program, a Head Start or an Even Start program; and in state-approved Montessori school programs.

(e) “Commissioner” means the chief administrative officer in charge of the department of education.

(f) “Department” means the department of education.

#### SECTION 43.

49-1-1003. Basis for approval; regulations; certificate application; temporary certificate; non-transferability of certificate; transfer of operation to circumvent approval laws or regulations; fees.

(a)(1) All persons or entities operating a child care program as defined in § 49-1-1002, must be certified by the department of education as provided by this part.

(2)(A) The state board of education shall have authority to issue regulations pursuant to the provisions of title 4, chapter 5, part 2 for the issuance of certificates of approval of any persons or entities subject to any provisions of this part and enforcement of appropriate standards for the health, safety and welfare of children in their care.

(B) To the extent they are not inconsistent with the statutory provisions of this part, the regulations of the department of education which are in effect upon the effective date of this act shall remain in force and effect until modified by regulatory action of the department.

(3) The state board of education's regulations of child care programs shall be developed and the continued approval of the certification status of a child care program shall be based upon the following criteria:

(A) The safety, welfare and best interests of the children in the care of the program;

(B) The capability, training and character of the persons providing or supervising the care to the children;

(C) The quality of the methods of care and instruction provided for the children;

(D) The suitability of the facilities provided for the care of the children; and

(E) The adequacy of the methods of administration and the management of the child care program, the program's personnel policies, and the financing of the program.

(b)(1) The department shall assist applicants or certificate holders in meeting the child care standards of the department unless the circumstances demonstrate that further assistance is not compatible with the continued safety, health or welfare of the children in the program's care and that disapproval of the program's certificate is warranted.

(2) If a certificate holder is denied the renewal of a certificate, or if such certificate is revoked, or if any applicant for a certificate cannot meet the standards, then the department shall offer reasonable assistance to the parents, guardians or custodians of the child in the planning for the placement of such children in other child care programs, in licensed child care agencies or in other suitable care.

(c) Application for a certificate to operate a child care program shall be made in writing to the department in such manner as the department determines.

(d)(1) If the department determines that the applicant has presented satisfactory evidence that the facility which is proposed for the care of children has received fire safety and environmental safety approval, that the applicant and the personnel who will care for the children are capable in all substantial respects to care for the children and that the applicant has the

ability and intent to comply with the certificate of approval law and regulations, the department shall issue a temporary certificate of approval to the applicant.

(2)(A) The purpose of the temporary certificate is to permit the certificate applicant to demonstrate to the department that it has complied with all approval laws and regulations applicable to its classification prior to issuance of an initial annual certificate of approval.

(B) If the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted certificate which limits the program's authority in one or more areas of operation.

(C) Within ninety (90) days of the issuance of the temporary certificate, the department shall determine if the applicant has complied with all regulations governing the classification of child care program for which the application was made.

(3) The department may extend the temporary certificate for a period of forty-five (45) days if the department determines that the applicant has clearly demonstrated that it intends to, and will be able to, achieve compliance with all approval laws and regulations within the forty-five (45) extension period and if the safety and welfare of the children in care of the applicant are not compromised by such extension.

(4)(A)(i) If the department determines that the applicant for any certificate of approval has complied with all licensing regulations for the classification of child care program for which application was made, the department shall issue an annual certificate of approval.

(ii) If the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted certificate which limits the agency's authority in one or more areas of operation.

(B) The certificate holder shall post the certificate in a clearly visible location as determined by the department so the parents for other persons visiting the program can readily view the certificate and all of the information on the certificate.

(C)(i) The certificate shall describe the ownership or controlling entity of the child care program, the person who is charged with the day-to-day management of the child care program, and, if the program is owned by a person other than the director, or if the program is under the ownership or direction or control of any person or entity who is not also the on-site director or manager of the program, the certificate shall also state the corporate or other name of the controlling person or entity, its address and telephone number where the parents, guardians or custodians may have contact regarding the program's operations.

(ii) If the child care program is operated by a public school or a private non-profit entity and is subject to the control or direction of a school board, or board of directors or other oversight authority, the certificate shall list the name, address and telephone number of the administrative officer in charge of the program or the administrative officer's designee or, if the child care program is not operated by a school system, the chairman of the board or other chief executive officer of such controlling body.

(5) In granting any certificate, the department may limit the total number of children who may be enrolled in the program regardless of the program's physical capacity or the size of its staff.

(6) If the department fails to issue or deny an annual certificate or extend the temporary certificate within ninety (90) days of the granting of the temporary certificate, the temporary certificate shall continue in effect, unless suspended, as provided in § 49-1-1007, until such determination is made. If an annual certificate of approval is denied following the issuance of a temporary certificate of approval, and if a timely appeal is made of the denial of the annual certificate of approval, the temporary certificate of approval shall remain in effect, unless suspended, until the advisory council renders a decision regarding the denial of the annual certificate of approval.

(7) If a temporary is denied, or if an annual certificate is denied or restricted, the applicant may appeal the denial or restriction as provided in § 49-1-1007.



(e)(1) No certificate for a child care program shall be transferable and the transfer by sale or lease or in any other manner of the operation of the program to any other person or entity shall void the certificate immediately and any pending appeal and the program shall be required to close immediately. If transferee has made application for, and has been granted, a temporary certificate of approval, the program may continue operation under the direction of the new certificate holder. The new certificate holder in such circumstances may not be the transferor or any person or entity acting on behalf of the transferor.

(2) If, however, the department determines that any person or entity has transferred nominal control of a program to any persons or entities who are determined by the department to be acting on behalf of the purported transferor in order to circumvent a history of violations of the approval law or regulations or to otherwise attempt to circumvent the approval law or regulations or any prior certificate actions instituted by the department, the department may deny the issuance of any certificate to the nominal applicant. Such denial may be appealed as provided in §49-1-1007.

(f)(1) Following the expiration of a least one (1) annual certificate, the department may issue an extended certificate to a certificate holder who seeks renewal of an existing certificate if the department determines that the certificate holder has demonstrated that its methods of child care and its adherence to laws and regulations governing certificates for child care programs are clearly appropriate to justify an extended certificate period. An extended certificate of approval may not be granted as the first certificate immediately following any temporary certificate of approval.

(2) The department may by rule establish any criteria for the issuance of an extended certificate; provided, however, no extended certificate shall exceed three (3) years duration.

(3) At the time renewal of the certificate is sought, or at any other time during the certificate period, the department may reduce the period of the extended certificate to a

shorter period if it determines that the certificate holder has failed to demonstrate continued adherence to the requirements for the issuance of the extended certificate. The certificate holder may appeal such action as provided

in § 49-1-1007.

(4) The issuance of an extended certificate shall not be construed in any manner to prevent the department from suspending or revoking the certificate, or placing a child care program on probation, if it determines that such action is appropriate.

#### SECTION 44.

49-1-1004. Injunctions against unapproved operations.

(a) The department may, in accordance with the laws of the state of Tennessee governing injunctions, maintain an action in the name of the state of Tennessee to enjoin any person, partnership, association, corporation or other entity from establishing, conducting, managing or operating any place or facility providing services to children without having a certificate as required by law, or from continuing to operate any such place or facility following suspension of a certificate or following the effective date of the denial or revocation of a certificate.

(b) In charging any defendant in a complaint for such injunction, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, conduct, manage or operate a place, home or facility of any kind which is a child care program as defined in this part or to charge that the defendant is about to do so without having in effect a certificate as required by law, or that the defendant continues to operate any such place or facility following suspension of a certificate, or following the effective date of the denial or revocation of a certificate, without averring any further or more particular facts concerning the case. Refusal to obey the inspection order may be punished as contempt.

#### SECTION 45.

49-1-1005. Criminal violations.

(a) Any person or entity, operating a child care program, as defined in §49-1-1001, without being certified by the department or who continues to operate such program while a suspension of the certificate is in effect, or who operates a child care program following the effective date of a denial or revocation of a certificate, commits a Class A misdemeanor.

(b) Each day of operation without an effective certificate constitutes a separate offense.

#### SECTION 46.

##### 49-1-1006. Inspection of persons or entities providing child care.

(a) It is the duty of the department, through its duly authorized agents, to inspect at regular intervals, without previous notice all child care programs or suspected child care programs, as defined in § 49-1-1002.

(b)(1) The department is given the right of entrance, privilege of inspection, access to accounts, records and information regarding the whereabouts of children under care for the purpose of determining the kind and quality of the care provided to the children and to obtain a proper basis for its decisions and recommendations.

(2) If refused entrance for inspection of a certified or suspected child care programs, the chancery or circuit court of the county where the, approved or suspected child care program may be located may issue an immediate ex parte order permitting the department's inspection upon a showing of probable cause, and the court may direct any law enforcement officer to aid the department in executing such order and inspection. Refusal to obey the inspection order may be punished as contempt.

(3) Except where court orders prohibit or otherwise limit access, parents or other caretakers of children in the care of a child care program certified pursuant to this part shall be permitted to visit and inspect the facilities and observe the methods for the care of their children at any time during which the children are in the care of the program and, except those records of other children and their parents or caretakers, shall further be permitted to inspect any records of the program which are not privileged, or are not otherwise

confidential, as provided by law or regulation, and the parents' or caretakers' access for these purposes shall not be purposely denied by the program.

(c) Any violation of the rights given in this section is a Class A misdemeanor.

#### SECTION 47.

49-1-1007. Violations of certificate regulations; probation, civil penalties, suspension, denial, and revocation of certificates; appeal procedures.

(a) If any complaint is made to the department concerning any alleged violation of the laws or regulations governing a child care program, the department shall investigate such complaint and shall take such action as it deems necessary to protect the children in the care of such program.

(b)(1) If, during the certificate period, the department determines that a child care program is not in compliance with the laws or regulations governing its operation, and if after reasonable written notice to the program of the violation, the department determines that the violation remains uncorrected, the department may place the certified program on probation for a definite period as determined by the department, and the department shall require the posting by the program of the notice of probation. The department shall provide the program a written basis describing the violation of the certificate rules that support the basis for the probationary status.

(2)(A) If placed on probation, the program shall immediately post a copy of the probation notice, together with a list provided by the department of the violations which were the basis for the probation, in a conspicuous place as directed by the department and with the program's certificate, and the program shall immediately notify in writing the custodians of each of the children in its care of the program's status, the basis for the probation and of its right to an informal review of the probationary status.

(B) If the program requests within two (2) business days, either verbally or in writing to the department's child care program staff which imposed the probation, the department shall informally review the probationary status by a department child care program staff

person, or other designee, who was not involved in the decision to impose the probation. The program may submit any written or oral statements as argument to such program staff person or designee within five (5) business days of the imposition of the probation. Written and oral statements may be received by any available electronic means. The program staff person or designee shall render a decision in writing upholding, lifting or modifying the probationary status within seven (7) business days of the imposition of the probation. The decision of the departmental child care program person or designee shall be final.

(3) If the probationary period imposed exceeds thirty business (30) days, and if the program staff person or designee did not overturn the probation under subdivision (B), the program may also appeal such action in writing to the commissioner within five (5) business days of the receipt of the notice of the program's probationary status. If timely appealed, the department shall conduct an administrative hearing pursuant to the provisions of §§ 4-5-301 et seq. concerning the department's action within fifteen (15) business days of receipt of the appeal and shall render a decision in writing within seven (7) business days following conclusion of the hearing. The hearing officer may uphold, modify or lift the probation.

(4)(A) If the program has appealed the probationary status as established by subdivisions (2) or (3), and if the program requests further review of its continued or modified probationary status, the department shall review the program's status, and may terminate or modify a probationary period if it determines that the purpose of the probationary period has been served and if the violations for which the probation was proposed have been satisfactorily corrected.

(B) If the department determines that the violations which were the basis for the probation have remained uncorrected, and the remaining probationary period

exceeds thirty (30) business days, the certificate holder may further appeal such determination as provided in subdivision (3).

(5) The provisions of this subsection shall be discretionary with the department, and shall not be a prerequisite to any certificate action, to impose a civil penalty or to suspend, deny or revoke a certificate of a child care program.

(c) If the department determines that there exists any violation:

(1) With respect to any person or entity required to be approved pursuant to this part, the department may assess a civil penalty against such person or entity in an amount not to exceed one thousand dollars (\$1,000) for each separate violation of a statute, rule or order pertaining to such person or entity. Each day of continued violation constitutes a separate violation.

(2) The department shall by rule establish a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to this subsection. In assessing civil penalties, the following factors may be considered:

(A) Whether the amount imposed will be a substantial economic deterrent to the violator;

(B) The circumstances leading to the violation and the program's history of violations;

(C) The severity of the violation, the extent of deviation from the statutes, rules or orders and the risk of harm to the children in care of the person or entity caused by the violation;

(D) The economic benefits gained by the violator as a result of noncompliance;

(E) The program's efforts to comply with the certificate approval requirements; and

(F) The interest of the public.

(3) The department shall assess the civil penalty in an order which states the reasons for the assessment of the civil penalty, the factors used to determine its assessment and the amount of the penalty.

(4) The order shall be served on the certificate holder personally by an authorized agent of the department who shall complete an affidavit of service, or the order may be served by certified mail, return receipt requested.

(5) The certificate holder may appeal the penalty to the child care advisory council by filing a request for an appeal in writing with the commissioner within ten (10) days of the service of the order.

(6)(A) Civil penalties assessed pursuant to this subsection shall become final ten (10) days after the date an order of assessment is served if not timely appealed, or, if timely appealed, within seven (7) days following entry of the council's order unless the council's order is stayed.

(B) If the violator fails to pay an assessment when it becomes final, the department may apply to the chancery court for a judgment and seek execution of such judgment.

(C) Jurisdiction for recovery of such penalties shall be in the chancery court of Davidson county.

(7) All sums recovered pursuant to this subsection shall be paid into the state treasury, but shall be earmarked to the department for the improvement of the quality of child care services in this state.

(8) The provisions of this subsection relative to civil penalties shall be discretionary with the department, and shall not be a prerequisite to any certificate action to suspend, deny or revoke a certificate of a child care program.

(d)(1) If the department determines that any applicant for a conditional certificate of approval or for the renewal of an existing certificate has failed to attain or maintain compliance with certificate laws or regulations after reasonable notice of such failure and a reasonable opportunity to demonstrate compliance with certificate law or regulations, it may deny the application for the new or renewed certificate; provided, however, the department at any time may deny a temporary certificate if the applicant fails to meet the initial requirements for its

issuance; and, provided, further, if the department determines that repeated or serious violations of licensing regulations warrant the denial of the certificate, then, notwithstanding any provisions of § 4-5-320 or this subsection to the contrary, the department may seek denial of the certificate regardless of the program's demonstration of compliance either before or after the notice of denial of the application.

(2) Notwithstanding the provisions of § 4-5-320, the notice of denial may be served personally by an authorized representative of the department who shall verify service of the notice by affidavit, or the notice may be delivered by certified mail, return receipt requested.

(3) If the temporary, annual or extended certificate is denied, the applicant may appeal the denial by requesting in writing to the department a hearing before the child care advisory council within ten (10) days of the personal delivery or mailing date of the notice of denial. Failure to timely appeal shall result in the expiration of any existing certificate immediately upon the expiration of the time for appeal.

(4) The hearing upon the denial shall be heard by the child care advisory council within thirty (30) days of the date of service of the notice of denial; provided, however, for good cause as stated in an order entered on the record, the council or the administrative law judge or hearing officer may continue the hearing; provided, however, in no event, however, shall the hearing be continued unless the council, administrative law judge or hearing officer makes a finding on the record that the children in the care of the child care program are in no immediate danger from the program's continued operation. A hearing may also be continued pursuant to the circumstances of subsection (i).

(5)(A) If timely appeal is made, pending the hearing upon the denial, the child care program may continue to operate pending the decision of the child care advisory council unless the certificate is summarily suspended as provided in subsection (f).

(B) The council, as part of its decision regarding the status of the applicant's certificate, may direct that the child care program be allowed to operate on a



probationary or conditional status, or may grant the certificate with any restrictions or conditions on the program's authority to provide care.

(e)(1) If the department determines that any existing certificate holder has failed to maintain compliance with certificate laws or regulations after reasonable notice of such failure and a reasonable opportunity to demonstrate compliance, the department may revoke the certificate; provided, however, if the department determines that repeated or serious violations of approval regulations warrant the revocation of the certificate, then, notwithstanding any provisions of § 4-5-320 of this subsection to the contrary, the department may seek revocation of the certificate regardless of the certificate holder's demonstration of compliance either before or after the notice of revocation.

(2) Notwithstanding the provisions of § 4-5-320, the notice of revocation may delivered personally by an authorized representative of the department who shall verify service of the notice by affidavit or the notice may be delivered by certified mail, return receipt requested.

(3) If the certificate is revoked, the certificate holder may appeal the denial by requesting in writing to the department a hearing before the child care advisory council within ten (10) days of the personal delivery or mailing date of the notice of revocation. Failure to timely appeal shall result in the expiration of any existing certificate immediately upon expiration of the time for appeal.

(4) The hearing upon the revocation shall be heard by the child care advisory council within thirty (30) days of the date of service of the notice of revocation; provided, however, for good cause as stated in an order entered on the record, the council or the administrative law judge or hearing officer may continue the hearing; provided, however, in no event, however, shall the hearing be continued unless the council, administrative law judge or hearing officer makes a finding on the record that the children in the care of the child care program are in no immediate danger from the program's continued operation. A hearing may also be continued pursuant to the circumstances of subsection (i).

(5)(A) If timely appeal is made, pending the hearing upon the revocation, the child care program may continue to operate pending the decision of the child care advisory council unless the certificate is summarily suspended as provided in subsection (f).

(B) The council, as part of its decision regarding the status of the certificate, may direct that the child care program be allowed to operate on a probationary or conditional status, or may allow the certificate to remain in effect with any restrictions or conditions on the program's authority to provide care.

(f)(1) If the department determines at anytime that the health, safety or welfare of the children in care of the child care program imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of the certificate may be ordered by the department pending any further proceedings for revocation, denial or other action. If the department determines that revocation or denial of the certificate is warranted following suspension, those proceedings shall be promptly instituted and determined as authorized by this part.

(2) In issuing an order of summary suspension of a certificate the department shall use the following procedures:

(A) The department shall proceed with the summary suspension and notify the certificate holder of the opportunity for an informal hearing before the department within seven (7) business days of the issuance of the order of summary suspension.

(B) The notice provided to the certificate holder may be provided by any reasonable means and shall inform the certificate holder of the reasons for the action or intended action of the department and of the opportunity for an informal hearing before the department.

(C) The informal hearing described by this subdivision shall not be required to be held under the contested case provisions of § 4-5-301 et seq. The hearing is intended to provide an informal, reasonable opportunity for the certificate holder to present to the

department the certificate holder's version of the circumstances leading to the suspension order. The sole issue to be considered is whether the public health, safety or welfare imperatively required emergency action by the department.

(D) Subsequent to the hearing on the summary suspension, the department may proceed with revocation or denial of the certificate or other action as authorized by this part, regardless of the decision concerning summary suspension of the certificate.

(g)(1) In determining whether to deny, revoke or suspend a certificate, the department may choose to deny, revoke or suspend only certain authority of the certificate holder to operate and may permit the certificate holder to continue operation, but may restrict or modify the certificate holder's authority to provide certain services or perform certain functions, including, but not limited to: transportation or food service, enrollment of children at the program, the program's hours of operation, the program's use of certain parts of the program's physical facilities or any other function of the child care program which the department determines should be restricted or modified to protect the health, safety or welfare of the children.

(2) The actions authorized by this subsection may be appealed as otherwise provided in this part for any denial or revocation.

(h)(1) When an application for a certificate of approval has been denied or a certificate of approval has been revoked on one (1) occasion, the child care program may not reapply for a certificate of approval for a period of one (1) year from the effective date of the denial or revocation order if not appealed, or, if appealed, from the effective date of the council's or reviewing court's decision.

(2) If such certificate of approval has been denied, or a certificate has been revoked, on two (2) occasions, the child care program may not reapply for a certificate of approval for a period of two (2) years from the date of the denial or revocation if not appealed or, if appealed, from the effective date of the council's or reviewing court's decision.

(3) If such certificate of approval has been denied, or a certificate has been revoked on three (3) occasions, the child care program shall not receive another certificate of approval for the care of children.

(4) No person who served as full or part owner or as director or as a member of the management of a child care program shall receive a certificate of approval if that person participated in such capacity in a child care program which has been denied a certificate of approval or which had a certificate of approval revoked on three (3) occasions.

(5)(A) The time restrictions of subdivisions (1) and (2) may be waived by the council in the hearing in which the denial or revocation is sustained, or, if requested by the former certificate holder in writing to the commissioner, in a separate subsequent hearing before the council or, in the discretion of the commissioner, upon review by the commissioner.

(B) The program must show to the council's or the commissioner's satisfaction that the program has corrected the deficiencies which led to the denial or revocation, and that the child care program can demonstrate that it has the present and future ability, and is willing, to maintain compliance with certificate laws or regulations. The decision of the council or the commissioner shall be reduced to an order, which shall be a final order pursuant to title 4, chapter 5, part 3, and may be appealed pursuant to § 4-5-322.

(C) No waiver may be granted for any permanent restriction which has been imposed pursuant to subdivision (3).

(i)(1) In conducting hearings before the child care advisory council, it is the legislative intent that such hearings be promptly determined consistent with the safety of the children in the care of the child care program appealing the department's certificate action and with the due process rights of the certificate applicants or certificate holders.

(2) If, however, the administrative procedures division of the office of the secretary of state certifies by letter to the recording secretary of the child care advisory council that the division's contested case docket prevents the scheduling of a hearing before the

council within the initial timeframes set forth in this part, then the department shall appoint a hearing officer to conduct proceedings before the board. The substitute hearing officer shall have all authority as an administrative law judge of the department of state. The hearing may be continued for the purpose of obtaining a substitute hearing officer.

(3) A hearing may also be continued if the administrative procedures division of the secretary of state's office certifies pursuant to this subsection that it cannot set a hearing within the time frame set forth in this subdivision.

#### SECTION 48.

49-1-1008. Annual report.

(a) Beginning October 1, 2000, each child care program shall submit to the commissioner an annual report.

(b) The report shall consist of:

- (1) Identification information;
- (2) Current enrollment figures;
- (3) Self-reporting on mandatory regulations;
- (4) Current certification status; and
- (5) Such additional information as determined by the department.

(c) Any entity not completing the annual report by October 1, shall receive notice of such failure and, if the report is not filed within thirty (30) days of the date of mailing of the notice, the certificate of approval shall be suspended immediately, pending receipt of the report.

#### SECTION 49.

49-1-1009. Collaboration with department of human services for training; funding and technical assistance.

(a) The departments of education and human services shall collaborate regarding the following areas relative to child care:

(1) Access to appropriate training opportunities that are provided through the Tennessee Early Childhood Training Alliance;

(2) Representation in committees and work groups that are responsible for planning funding allocations for Child Care Development Block Grant funds;

(3) Recognition of department of education programs on the department of human services' resource and referral system;

(4) Eligibility of department of education-monitored programs for child care certificate funds;

(5) Dual access to child care provider data in order to maintain the current status of child care service broker information;

(6) The planning and coordination of annual meetings between staff of the child care services division of the department of human services and the department of education for the purpose of advancing the quality of child care in Tennessee;

(7) Access to training and technical assistance from the Child Care Resource Center; and

(8) Training that might be developed through any of the child care programs monitored by the department of education.

(b) The department shall require departmental employees who conduct on-site inspections of child care programs to periodically participate in the training activities conducted by the department of human services for inspectors of that department's child care programs.

SECTION 50. Tennessee Code Annotated, Section 49-5-413, is amended by deleting the section in its entirety and by substituting instead the following:

49-5-413. Investigation of applicants for teaching or child care positions.

(a) In addition to the requirements of § 49-5-406, a local board of education or any child care program as defined in § 49-1-1002 shall require any person applying for a position as a

teacher and any person applying for any other position requiring proximity to school children or to children in a child care program to:

(1) Agree to the release of all investigative records to the board or child care program for examination for the purpose of verifying the accuracy of criminal violation information as required by § 49-5-406(a)(1)(A); and

(2) Supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee bureau of investigation.

(b) Any reasonable costs incurred by the Tennessee bureau of investigation in conducting such investigation of an applicant shall be paid by the applicant the first time such applicant applies for a position with a local board of education or a child care program. The applicant shall be provided a copy of all criminal history records check documentation provided to the local board of education or child care program to which the applicant first applies. In lieu of additional criminal history records checks for subsequent applications, the applicant may submit copies of the applicant's initial criminal history records check documentation and shall not be required to pay any additional costs. Any local board of education or child care program may reimburse the applicant for the costs of the investigation if the applicant accepts a position as a teacher or any other position requiring proximity to school children or children in a child care program. Any local board of education or child care program may establish a policy authorizing payments for investigations of an applicant who provides school maintenance, clean up, food service and other such functions other than administrative or teaching functions or duties. A local board of education or child care program may pay for an investigation of such applicant regardless of whether the applicant accepts an offer for employment with such board of education or child care program.

SECTION 51. The Tennessee Code Commission is directed to replace the in the Tennessee Code Annotated the language "child welfare agency" or "child welfare agencies" with the language "child care agency" or "child care agencies" wherever such language is

found, as the context may require, and where the context does not otherwise render such changes unnecessary or inappropriate.

SECTION 52. Tennessee Code Annotated, § 4-37-108, is amended by deleting subsection (2) in its entirety and by substituting instead the following:

(2) The loan or grant is to be used to finance the continued operation, improvement, expansion or development of a child care center, group child care home, family child care home, or prescribed child care center; and

SECTION 53. Tennessee Code Annotated, Section 33-1-209, is amended by deleting the symbol and numerals “§ 38-6-114” in subdivision (c)(4) and by substituting instead the symbol and numerals “§ 38-6-109”.

SECTION 54. Tennessee Code Annotated, Section 36-1-108, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) "Placement of a child or children for adoption" means, for purposes of this section and § 36-1-109 and for licensing purposes in title 37, chapter 5, part 5 and for § 37-5-507, that a person, corporation, agency, or other entity is employed, contracted, or engaged, in any manner for any remuneration, fee, contribution, or thing of value, of any type by, or on behalf of, any person:

SECTION 55. Tennessee Code Annotated, Section 37-1-602(a), is amended by deleting subdivision (3) in its entirety and by substituting instead the following:

(3) "Child care agency " is as defined in § 71-3-501 and 37-5-501;

SECTION 56. Tennessee Code Annotated, Section 37-1-603, is amended by deleting the language “child day care centers” in subsection (a) and by substituting instead the language “child care centers”; and is further amended by deleting in subdivision (b)(1) the language “child abuse agency as defined in § 71-3-501” and by substituting instead the language “child abuse agency as defined in § 37-5-501”; and is further amended by deleting the language “by the



department” at the end of the first sentence in subdivision (b)(1)(A) and by substituting instead the language “by the departments of children’s services or human services”.

SECTION 57. Tennessee Code Annotated, Section 37-2-402, is amended by deleting subdivision (1) in its entirety and by substituting instead the following:

(1) "Agency" means a child care agency, as defined in title 71, chapter 3, part 5, or in title 37, chapter 5, part 5, regardless of whether such agency is licensed or approved, and includes the department of children's services;

SECTION 58. Tennessee Code Annotated, § 37-2-412, is amended by deleting subdivision (e)(1) and (2) in their entireties and by substituting instead the following:

(e)(1) The department of children's services shall enforce the provisions of this section only for its own foster homes or for agencies which it licenses pursuant to title 37, chapter 5, part 5, and it shall periodically undertake appropriate activities to encourage and ensure compliance.

(2) Any violations noted by the department as a result of its inspections of child care agencies pursuant to § 37-5-513 shall be processed in the manner prescribed in that section.

SECTION 59. Tennessee Code Annotated, Section 37-2-414, is amended by deleting the language “ day care center or family day care home in subdivision (b)(4)(A) in its entirety, and by substituting instead the language “child care center, group child care home or family child care home”.

SECTION 60. Tennessee Code Annotated, Section 37-5-106, is amended by deleting subdivision (3)(A) in its entirety and by substituting instead the following:

(3)(A) License or approve and supervise child care agencies as defined in § 37-1-501 et seq., which are placed within the department's jurisdiction pursuant to law;

SECTION 61. Tennessee Code Annotated, Section 37-5-109, is amended by deleting subsections (1), (2) and (5) their entireties and by substituting instead the following:

(1) The department of children's services shall license or approve and supervise child abuse agencies, child caring institutions, child placing agencies, detention centers, family boarding or foster care homes, group care homes, maternity homes and temporary holding resources. Not later than January 1, 1999, the department shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children. Exceptions to the department's licensing responsibilities concerning the aforementioned categories are contained in § 37-5-503.

(2) The department of human services shall license or approve and supervise child-care centers, family child-care homes, group child-care homes and prescribed child-care centers. Exceptions to the department of human services' licensing responsibilities concerning the aforementioned categories are contained in § 71-3-503;

(5) Subject to the exemptions set out in §37-5-503, and pursuant to promulgated rules and regulations, the department will license or approve or supervise any entity which provides residential services to children and is not otherwise subject to licensure, approval, certification or supervision by any other agency as required by state law.

SECTION 62. Tennessee Code Annotated, Section 39-17-1604, is amended by deleting the language "child day care centers" and "day care center" in subsection (1) and by substituting instead, respectively, the language "child care centers" and "child care center".

SECTION 63. Tennessee Code Annotated, Section 41-22-128, is amended by deleting the language "day care" in the catchline and in the text of the section, and by substituting instead the language "child care".

SECTION 64. Tennessee Code Annotated, Section, 68-14-303, is amended by deleting subsection (9) in its entirety and by substituting instead the following:

(9) Levy and collect fees for inspections of food service establishments; provided, that no fee shall be charged for reinspections of such establishments; and provided further, that

in no event shall an inspection or reinspection fee be levied or collected from a child care center, from a group child care home, or from a family child care home, as defined by § 71-3-501.

SECTION 65. Tennessee Code Annotated, Section § 68-14-313, is amended by deleting subdivision (a)(4) in its entirety and by substituting instead the following:

(4) Child care center food service establishments shall pay according to the following schedule:

0-50 seats	\$ 50.00
51 or more seats	80.00

The provisions of this section shall not apply to family child care homes, as defined by § 71-3-501.

SECTION 66. Tennessee Code Annotated, Section 68-120-106, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) Notwithstanding the provisions of this section or any other law to the contrary, with respect to:

- (1) Child care centers, as defined by § 71-3-501;
- (2) Group child care homes, as defined by § 71-3-501; and
- (3) Family child care homes, as defined by § 71-3-501;

if a conflict arises between the state fire marshal and any other official having concurrent jurisdiction relative to application or interpretation of the same or substantially identical building construction safety standards or fire prevention standards, then the determination of the state fire marshal shall supersede the conflicting application or interpretation by the other official having concurrent jurisdiction. The provisions of this subsection shall not be construed to abrogate any right of appeal granted under part 4 of this chapter.

SECTION 67. Tennessee Code Annotated, Section 68-212-105, is amended by deleting the language “day care” in subsection (6) and by substituting instead the language “child care”.

SECTION 68. Tennessee Code Annotated, Section 71-3-157, is amended by deleting the language “day care” in subsection (f) and by substituting instead the language “child care”.

SECTION 69. Tennessee Code Annotated, Section 71-2-403, is amended by deleting the section in its entirety and by substituting instead the following:

71-2-403. Criminal history violation information required of persons having access to adults--Review of vulnerable persons registry--Verification--Exclusion from access to adults--Appeals.

(a)(1) Criminal background checks shall be conducted for all new employees, or for volunteers who are counted in the staff:adult participant ratio and those volunteers who have unsupervised access to the adult participants, in adult day care centers, and for all new department licensing staff who provide services to adults in the department’s adult day care licensing program and all new counselors and supervisors in the adult protective services program. The procedure and processes shall be the same as that as provided in § 71-3-507 for the criminal background checks that are conducted for new employees and new volunteers in child care agencies and for the department’s new employees under § 71-3-507; provided, however, the adult day care center, not the department, shall be responsible for all of the costs of the fingerprint criminal background checks conducted for its employees or volunteers by the Tennessee bureau of investigation and the federal bureau of investigation.

(2) The adult day care center may require that the costs of the background check be a part of the application process by a prospective employee or volunteer, or pay the costs and recover the costs of the fingerprint criminal background checks from the prospective employee following employment. The department shall pay all costs required for its employees subject to the required criminal background check.

(b) The Tennessee bureau of investigation shall make any reports of positive matches pursuant to this section in the same manner as provided for any of the processes authorized by § 71-3-507.

(c) Conviction of an offense, or a lesser included offense, involving the physical, sexual or emotional abuse; neglect; financial exploitation or misuse of funds, or theft from any person, or which constitutes conviction of an offense involving violence against any person, or conviction of an offense involving the manufacture, sale possession or distribution of any drug, or a no contest plea to such offenses, and any pending warrants, indictments or presentments for such offenses, or the identification of any person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, shall disqualify such person from employment with, or from having any access whatsoever, to adults in an adult day care center as defined by this part, or with the department.

SECTION 70. Tennessee Code Annotated, Section 71-2-405, is amended by deleting the section in its entirety and by substituting instead the following:

71-2-405. Licensing procedures; fees; biennial licenses; transfers of licenses.

(a)(1) An application for a license shall be submitted to the department in such manner as the department may require.

(2) An application for a license shall be accompanied by the appropriate fee for the license and shall be received by the department not less than thirty (30) days prior to the expiration date of the existing license. Failure to timely submit a renewal application for a license shall result in expiration of the existing license.

(3) Each application submitted to the department for a new license or for the renewal of a license shall be accompanied by the fee required for the license.

(4) The commissioner may approve applications for renewal of a license as a biennial or triennial licensee if the commissioner determines that the applicant's methods of care

and history of compliance clearly demonstrate that a biennial or triennial license is warranted.

(5) The fees for adult day care centers shall be:

(A)(i) Centers caring for less than twenty (20) participants:

Annual Fee.....	\$ 125.00
Biennial Fee.....	\$ 175.00
Triennial Fee.....	\$ 200.00

(ii) Centers caring for twenty (20)-one hundred (100) participants:

Annual Fee.....	\$ 200.00
Biennial Fee.....	\$ 250.00
Triennial Fee.....	\$ 300.00

(iii) Centers caring for more than one hundred (100) participants:

Annual Fee.....	\$ 400.00
Biennial Fee.....	\$ 450.00
Triennial Fee.....	\$ 500.00

(B) The fees shall be earmarked and dedicated to the department of human services for the improvement of the quality of adult services in this state.

(C) If the department issues a temporary license after the application fee is paid, no further fee shall be required until the adult day care center applies again for an annual license or for renewal of the regular annual, biennial or triennial license.

(D) Any adult day care center which is operated by a public, nonprofit agency or local municipality operating under a grant from the department and which pays an administrative fee as part of the monitoring requirements of such grant shall be exempt from the licensing fee.

(b)(1) If the department determines that the applicant for annual license does not meet all of the requirements for such license, but has presented satisfactory evidence that the

facility which is proposed for the care of adults has received fire safety, environmental safety and any necessary food establishment approval, that the applicant and the personnel who will care for the adults are capable in substantially all respects to care for the adults and that the applicant has the ability and intent to comply with the licensing law and regulations, the department may issue a temporary license to the applicant.

(2) The purpose of the temporary license is to permit the license applicant to demonstrate to the department that the applicant has complied with all licensing laws and regulations applicable prior to the issuance of an initial annual license.

(3) Within six (6) months of the issuance of the temporary license, the department shall determine if the applicant has complied with all regulations governing the adult day care centers. The department may extend the period of the temporary license for an additional six (6) months if the department determines that the applicant has made substantial progress in meeting the requirements of the law and regulations for an initial annual license.

(4)(A) If the department determines that the applicant for any license has complied with all licensing laws and regulations for adult day care centers, the department shall issue an annual, biennial or triennial license; if the applicant has not complied with such licensing laws and regulations, the department shall deny the annual, biennial, or triennial license.

(B)(i) No applicant which is license as a health care facility, community care facility, or clinic may be issued any license for an adult day care center while there exists a substantial, uncorrected violation of the statutes or regulations relating to such license.

(C) A biennial or triennial license may not be granted as the first license immediately following any temporary license. If a biennial or triennial license is granted, the commissioner may limit the biennial or triennial license to an annual or biennial or

triennial license at the next renewal period, or may at anytime reduce the biennial or triennial licensure period to a shorter period. Such reduction in the licensing period may be appealed pursuant to the procedures for appeal of license denials or revocations.

(D) The annual, biennial or triennial license shall expire, respectively, twelve (12), twenty-four (24) or thirty-six (36) months from the date of its issuance unless the licensee has made timely reapplication for renewal and the department has not determined the status of the application, in which case the existing license shall continue in effect, unless suspended, until such determination is made and until a timely filed appeal is resolved by entry of a final order regarding the license application pursuant to § 4-5-314.

(c) Each license issued or renewed pursuant to this part shall not be transferable to any other person or entity, and the sale, or transfer of the adult day care facility by any means, from the person or entity which is named as the licensee to any other person or entity shall void the existing license or any pending appeal of the denial or revocation of the existing license, and shall require an application by the transferee for an annual license and the payment of the required licensing fee. The adult day care center, the ownership or control of which has been transferred by the existing licensee, may not continue operation until a temporary or annual license is granted to the transferee. The new licensee in such circumstances may not be the transferor or any person or entity acting on behalf of the transferor.

SECTION 71. Tennessee Code Annotated, Section 71-2-407, is amended by deleting the Section in its entirety and by substituting instead the following new Section:

71-2-407. Restricted licenses.

(a)(1) In determining whether to deny, revoke or suspend a license, or in granting any license, the department may choose to deny, revoke or suspend or grant only certain



authority of the licensee to operate and may permit the licensee to continue operation, but may restrict or modify the licensee's authority to provide certain services or perform certain functions, including, but not limited to: transportation or food service, enrollment of adult participants at the center, the center's hours of operation, the center's use of certain parts of the center's physical facilities or any other function of the adult day care center which the department determines should be restricted or modified to protect the health, safety or welfare of the adult participants. The actions authorized by this subdivision may be appealed as otherwise provided in this part for any denial or revocation.

(2) At any hearing on a denial, revocation or suspension, the administrative law judge or hearing officer may, as part of its decision regarding the status of the applicant's or licensee's license, direct that the adult day care center be allowed to operate on a probationary or conditional status, or may allow the license to remain in effect with any restrictions or conditions on the center's authority to provide care.

SECTION 72. Tennessee Code Annotated, Sections, 71-2-408 and 71-2-409, are repealed and subsequent sections of Title 71, Chapter 2, Part 4 shall be renumbered accordingly.

SECTION 73. Tennessee Code Annotated, Section 71-2-411, is amended by deleting subsection (c) in its entirety and by substituting instead the following:

(c)(1) If, during the licensing period, the department determines that an adult day care center is not in compliance with the laws or regulations governing its operation, and if after reasonable written notice to the center of the violation, the department determines that the violation remains uncorrected, the department may place the center on probation for a definite period as determined by the department, and the department shall require the posting by the center of the notice of probation. The department shall provide the center a written basis describing the violation of the licensing rules that support the basis for the probationary status.

(2)(A) If placed on probation, the center shall immediately post a copy of the probation notice, together with a list provided by the department of the violations which were the basis for the probation, in a conspicuous place as directed by the department and with the center's license, and the center shall immediately notify in writing the responsible adult day care participant, and the responsible relatives or caretakers of each of the adults in its care, of the center's status, the basis for the probation and of its right to an informal review of the probationary status.

(B) If the center requests within two (2) business days of the imposition of probation, either verbally or in writing to the department's licensing staff which imposed the probation, the department shall informally review the probationary status by a departmental staff person or designee who was not involved in the decision to impose the probation. The center may submit any written or oral statements as argument to that person or designee within five (5) business days of the imposition of the probation. Written and oral statements may be received by any available electronic means. The departmental staff person or designee shall render a decision in writing upholding, lifting or modifying the probationary status within ten (10) business days from the date the written or oral statements are provided. The decision of the departmental staff person shall be final.

(3) If the probationary period imposed exceeds thirty business (30) days, the center may also appeal such action in writing to the commissioner within five (5) business days of the receipt of the notice of the center's probationary status. If timely appealed, the department shall conduct an administrative hearing pursuant to the provisions of §§ 4-5-301 et seq. concerning the department's action within fifteen (15) business days of receipt of the appeal and shall render a decision in writing within seven (7) business days following conclusion of the hearing. The hearing officer may uphold, modify or lift the probation.

(4)(A) If the center has appealed the probationary status as established by subdivisions (2) or (3), and if the center requests further review of its continued or modified probationary status, the department shall review the center's status, and may terminate or modify a probationary period if it determines that the purpose of the probationary period has been served and if the violations for which the probation was imposed have been satisfactorily corrected.

(B) If the department determines that the violations which were the basis for the probation have remained uncorrected, and the remaining probationary period exceeds thirty (30) business days, the licensee may further appeal such determination as provided in subdivision (3).

(5) The provisions of this subsection shall be discretionary with the department, and shall not be a prerequisite to any licensing action, to suspend, deny or revoke a license of an adult day care center.

SECTION 74. This act shall take effect July 1, 2000, the public welfare requiring it.